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HEVEY, JOHN.

TRIAL of
Mr. John Hevey, Plaintiff, and
Charles Henry Sirr, defendant

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Trial of Mayor
Sir = False Imprisonm
Of John Hervey. 1802

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Second Edition.

TRIAL

BY

NISI PRIUS,

IN THE

COURT OF KING's BENCH, IRELAND,

IN THE CASE WHEREIN

MR. JOHN HEVEY

WAS

PLAINTIFF,

AND

CHARLES HENRY SIRR, Esq.

WAS

DEFENDANT.

ON AN

ACTION FOR AN ASSAULT,

AND

FALSE IMPRISONMENT.

This Trial was had before the Right Honourable Arthur Lord Viscount Kilwarden, Lord Chief Justice of the King's Bench.

AND A

SPECIAL JURY.

DUBLIN:

PRINTED BY JOHN STOCKDALE, NO. 62, ABBEY-STREET.

1802.

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COURT OF KING's BENCH, IRELAND.

IN THE CASE WHEREIN,

MR. JOHN HEVEY was PLAINTIFF,

AND

CHARLES HENRY SIRR Esq. was DEFENDENT.

ON AN

ACTION FOR AN ASSAULT AND FALSE IMPRISONMENT.

This Trial was had before the *Right Honourable Arthur Lord Viſcount Kilwarden, Lord Chief Juſtice of the King's Bench:*

And a Reſpectable Jury of the City of Dublin, was then ſworn.

John Lindſay,	James Blacker,
B. Maziere,	Bennett Dugdale,
Richard Litton,	John Norton,
Thomas Kennan,	Francis Hamilton,
Wm. G. Galway,	Edward Rice,
John Dickinſon,	Iſaac Manders,

MONDAY, SEVENTEENTH OF MAY, 1802.

MR. CURRAN ſtated the caſe for the plaintiff, in ſubſtance nearly to the following effect.

He began by telling the jury, it was the moſt extraordinary action he had ever met with. It muſt have proceeded from the moſt unexampled impudence in the plaintiff, if he has brought it wantonly; or the moſt unparalelled miſcreancy in the defendant, if it ſhall appear ſupported by proof. And the event muſt ſtamp the moſt condign and indelible diſgrace on the guilty defendant, unleſs an unworthy verdict ſhould ſhift the ſcandal upon another quarter. On the record the action he ſaid appeared ſhort and ſimple; it was an action of treſpaſs, *vi et armis*, for an aſſault, battery, and

falſe

falſe impriſonment. But the facts that led to it, that explain its nature, and its enormity, and of courſe that ſhould meaſure the damages, were neither ſhort nor ſimple; the novelty of them might ſurpriſe, the atrocity muſt ſhock their feelings, if they had feelings to be ſhocked;—but he ſaid, he did not mean to addreſs himſelf to any of their proud feelings of liberty. The ſeaſon for that was paſt. There was indeed he ſaid, a time when, in addreſſing a jury upon very inferior violations of human rights, he had felt his boſom glow, and ſwell with the noble and elevating conſciouſneſs of being a Free-man, ſpeaking to Free-men, and in a Free Country; where, if he was not able to communicate the generous flame to their boſoms, he was not at leaſt ſo cold as not to catch it from them. But that was a ſympathy, which he was not now ſo fooliſh as to affect either to inſpire, or participate. He would not inſult them by the bitter mockery of ſuch an affectation; buried as they were, he did not wiſh to conjure up the ſhades of departed Freedom to flutter round their tomb, to haunt or to reproach them. Where freedom is no more, it is a miſchievous prophanation to uſe her language; becauſe it tends to deceive the man who is no longer free, upon the moſt important of all points; that is, the nature of the ſituation to which he is reduced; and to make him confound the licentiouſneſs of words, with the real poſſeſſion of freedom. He meant not therefore, he ſaid, to call for an haughty verdict, that might humble the inſolence of oppreſſion, or aſſert the fancied rights of Independence. Far from it; he only aſked for ſuch a verdict, as might make ſome reparation for the moſt extreme and unmerited ſuffering, and might alſo tend to ſome probable mitigation of the public, and general deſtiny. For this purpoſe, he ſaid, he muſt carry back their attention to the melancholy period of 1798. It was at that ſad criſis, that the defendant from an obſcure individual, ſtarted into notice and conſequence. It is in the hot-bed of public calamity, that ſuch portentous and inauſpicious products are accelerated without being matured. From being a town-major, a name ſcarcely legible in the liſt of public incumbrances, he became at once inveſted with all the real powers of the moſt abſolute authority. The life and the liberty of every man ſeemed to be given up to his diſpoſal. With this gentleman's extraordinary elevation

began

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began the ſtory of the ſufferings and ruin of the plaintiff. It ſeems a man of the name of *M'Guire* was proſecuted for ſome offence againſt the ſtate. *Mr. Hevey* the plaintiff by accident was in court; he was then a citizen of wealth and credit, a Brewer in the firſt line of that buſineſs. Unfortunately for him, he had therefore heretofore employed the witneſs for the proſecution, and found him a man of infamous character. Unfortunately for himſelf, he mentioned this circumſtance in Court. The counſel for the priſoner inſiſted on his being ſworn; he was ſo. The jury were convinced, that no credit was due to the witneſs for the crown; and the priſoner was accordingly acquitted. In a day or two after *Major Sirr* met the plaintiff in the ſtreet; aſked how he dared to interfere in his buſineſs, and ſwore by God he would teach him how to meddle with "his people." Gentlemen, ſaid *Mr. Curran*, there are two ſorts of prophets, one that derives its ſource from real or fancied inſpiration, and who are ſometimes miſtaken. But there is another claſs, who prophecy what they are determined to bring about themſelves. Of this ſecond, and by far the moſt authentic claſs, was the *Major*; for heaven you ſee has no monopoly of prediction. On the following evening, poor *Hevey* was dogged in the dark into ſome lonely alley; there he was ſeized he knew not by whom, nor by what authority —and became in a moment, to himſelf, to his family, and his friends, as if he had never been. He was carried away in equal ignorance of his crime, and of his deſtiny; whether to be tortured, or hanged, or tranſported. His crime he ſoon learned; it was the treaſon which he had committed againſt the majeſty of *Major Sirr*. He was immediately conducted to a new place of impriſonment in the Caſtle-yard, called the provoſt. Of this manſion of miſery, of which you have ſince heard ſo much, *Major Sandys* was, and I believe yet is, the keeper. A gentleman of whom I know how dangerous it is to ſpeak; and of whom every prudent man will think, and talk with all due reverence. He ſeemed a twin-ſtar of the defendant—equal in honour, in confidence; equal alſo, (for who could be ſuperior?) in probity and humanity. To this gentleman was my client conſigned, and in his cuſtody he remained about ſeven weeks, unthought of by the world, as if he had never exiſted. The oblivion of the buried, is as profound as the oblivion of the dead; his

family may have mourned his abſence, or his probable death; but why ſhould I mention ſo paltry a circumſtance? The fears, or the ſorrows of the wretched, give no interruption to the general progreſs of things. The ſun roſe, and the ſun ſet, juſt as it did before—the buſineſs of the government, the buſineſs of the caſtle, of the feaſt, or the torture, went on with their uſual exactneſs and tranquillity. At laſt *Mr. Hevey* was diſcovered among the ſweepings of the priſon; and was at laſt to be diſpoſed of. He was at laſt honoured with the perſonal notice of *Major Sandys*.—"*Hevey* (ſays the *Major*,) I have ſeen you ride I think a ſmart ſort of mare; you can't uſe her here; you had better give me an order for her." The plaintiff, you may well ſuppoſe, by this time had a tolerable idea of his ſituation; he thought he might have much to fear from a refuſal, and ſomething to hope from compliance; at all events, he ſaw it would be a means of apprizing his family that he was not dead—he inſtantly gave the order required. The *Major* graciouſly accepted it, ſaying, your courteſy will not coſt you much, you are to be ſent down to morrow to Kilkenny to be tried for your life; you will moſt certainly be hanged; and you can ſcarcely think that your journey to the other world will be performed on horſeback. The humane, and honorable *Major* was equally a prophet with his compeer. The plaintiff on the next day took leave of his priſon, as he ſuppoſed for the laſt time, and was ſent under a guard to Kilkenny, then the head quarters of *Sir Charles Aſgil*, there to be tried by court-martial for ſuch crime, as might chance to be alleged againſt him. In any other country, the ſcene that took place on that occaſion might excite no little horror, and aſtoniſhment; but with us, theſe ſenſations are become extinguiſhed by frequency of repetition. I am inſtructed, that a proclamation was ſent forth, offering a reward to *any* man, who would come forward, and give any evidence againſt the traitor *Hevey*. An unhappy wretch, who had been ſhortly before condemned to die, and was then lying ready for execution, was allured by the propoſal. His integrity was not firm enough to heſitate long, between the alternative propoſed; pardon, favour, and reward, with perjury on one ſide; the rope and the gibbet on the other. His loyalty decided the queſtion againſt his ſoul. He was examined, and *Hevey* was appointed by the ſentence of a

mild,

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mild, and no doubt, enlightened court-martial, to take the place of the witneſs, and ſucceed to the vacant halter. *Hevey*, you may ſuppoſe *(continued Mr. Curran,)* now thought his labours at an end; but he was miſtaken: his hour was not yet come. You are probably Gentlemen, or you my Lord are accounting for his eſcape, by the fortunate recollection of ſome early circumſtances, that might have ſmote upon the ſenſibility of *Sir Charles Aſgil*, and made him believe, that he was in debt to Providence for the life of one innocent, though convicted victim. But it was not ſo; his eſcape was purely accidental. The proceedings upon his Trial, happened to meet the eye of *Lord Cornwallis*. The freaks of fortune are not always cruel; in the bitterneſs of her jocularity, you ſee ſhe can adorn the miſcreancy of the ſlave, in the trappings of power, and rank, and wealth. But her playfulneſs is not always inhuman; ſhe will ſometimes in her gambols, fling oil upon the wounds of the ſufferer; ſhe will ſometimes ſave the captive from the dungeon and the grave, were it only, that ſhe might afterwards reconſign him to his deſtiny, by the repriſal of capricious cruelty upon fantaſtic commiſeration. *Lord Cornwallis* read the tranſmiſs of *Hevey's* condemnation; his heart recoiled from the detail of ſtupidity and barbarity. He daſhed his pen acroſs the odious record, and ordered that *Hevey* ſhould be forthwith liberated. I cannot but highly honor him for his conduct in this inſtance; nor, when I recollect his peculiar ſituation at that diſaſtrous period, can I much blame him for not having acted towards that court, with the ſame vigour and indignation, which he has ſince ſhewn with reſpect to thoſe abominable juriſdictions. *Hevey* was now a man again—he ſhook the duſt of his feet againſt his priſon gate: his heart beat the reſponſe to the anticipated embrace of his family, and his friends, and he returned to Dublin. On his arrival here, one of the firſt perſons he met was his old friend, *Major Sandys*. In the eye of poor *Hevey*, juſtice and humanity had ſhorn the *Major* of his beams—he no longer regarded him with reſpect or terror. He demanded his mare; obſerving, that though he might have travelled to heaven on foot, he thought it more comfortable to perform his earthly journeys on horſeback. Ungrateful villain, ſaid the *Major*; is this the gratitude you ſhew to his majeſty and to me, for our clemency to you? You ſhan't get poſſeſſion of the beaſt,

beaſt, which you have forfeited by your treaſon, nor can I ſuppoſe, that a noble animal, that had been honoured with conveying the weight of duty and allegiance, could condeſcend to load her loyal loins with the vile burden of a convicted traitor. As to the *Major* (ſaid *Mr. Curran)* I am not ſurpriſed that he ſpoke and acted as he did. He was no doubt aſtoniſhed at the impudence, and novelty of calling the privileges of official plunder into queſtion. Hardened by the numberleſs inſtances of that mode of unpuniſhed acquiſition, he had erected the frequency of impunity into a ſort of warrant of ſpoil and rapine. One of theſe inſtances, I feel, I am now bringing to the memory of your Lordſhip. A learned and reſpected brother barriſter, had a ſilver cup; the *Major* heard that for many years it had borne an inſcription of "*Irin go brach*," which means "*Ireland for ever*." The *Major* conſidered this perſeverance in guilt for ſuch a length of years, as a forfeiture of the delinquent veſſel. My poor friend was accordingly robbed of his cup. But, upon writing to the then *Attorney-General*, that excellent officer felt the outrage, as it was his nature to feel every thing that was barbarous or baſe; and the *Major's* loyal ſide-board was condemned to the grief of reſtitution. And here, (ſaid *Mr. Curran)* let me ſay in my own defence, that this is the only occaſion, upon which I have ever mentioned this circumſtance with the leaſt appearance of lightneſs. I have often told the ſtory in a way that it would not become me to tell it here. I have told it in the ſpirit of thoſe feelings, which were excited at ſeeing, that one man could be ſober and humane at a criſis, when ſo many thouſands were drunk and barbarous. And probably my ſtatement was not ſtinted by the recollection, that I held that perſon in peculiar reſpect and regard. But little does it ſignify, whether acts of moderation and humanity are blazoned by gratitude, by flattery or by friendſhip; they are recorded in the heart from which they ſprung: and, in the hour of adverſe viciſſitude, if it ſhould ever come, ſweet is the odour of their memory, and precious is the balm of their conſolation. But to return; *Hevey* brought an action for his hare. The *Major* not chooſing to come into Court, and thereby ſuggeſt the probable ſucceſs of a thouſand actions, reſtored the property, and paid the coſts of the ſuit, to the attorney of *Mr. Hevey*. It may perhaps ſtrike you, my

Lord

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Lord, ſaid *Mr. Curran*, if I was ſtating, wha
relevant to the action. It is materially pertin
ſtating a ſyſtem of concerted vengeance and
Theſe two men acted in concert; they were
Aimwell. You Maſter at Lichfield and I at Cove
plunderer in the jail, and I tyrant in the ſtreet.
reſpective ſituations, we will co-operate in the con
of robbery, and vengeance. And I ſtate this
Curran) becauſe I ſee *Major Sandys* in court. A
I feel I can prove the fact, beyond the poſſibility
If he does not dare to appear, ſo called upon,
called upon him, I prove it by his not daring to
he does venture to come forward, I will prove it
oath, or if he ventures to deny a ſyllable, that I
I will prove by irrefragable evidence of record th
nial is falſe, and perjured. Thus far, Gentlemen,
Curran) we have traced the plaintiff through
viciſſitudes of barbarous impriſonment, of atr
demnation, and of accidental deliverance.
Curran deſcribed the feelings of himſelf and his fa
his reſtoration; his difficulties on his return; h
againſt the aſperſions on his character; his renewe
his gradual ſucceſs; the implacable malignity of
Sandys; and the immediate cauſe of the preſ
Three years (ſaid *Mr. Curran*) had elapſed, ſince
ance of my client; the public atmoſphere had cl
private deſtiny of *Hevey* ſeemed to have brighten
malice of his enemies had not been appeaſed.
of September laſt, *Mr. Hevey* was ſitting in a pu
houſe, *Major Sirr* was there. *Mr. Hevey* wa
that the major had at that moment ſaid, that
ought to have been hanged. The plaintiff was
charge; he fixed his eye on *Sirr*, and aſked, if he
to ſay ſo. *Sirr* declared that he had; and had
Hevey anſwered that he was a ſlanderous ſcoundr
inſtant *Sirr* ruſhed upon him, and aſſiſted by thre
his ſatellites, who had attended him in diſguiſe,
and ſent him to the caſtle guard, deſiring that a re
be given for the villain. He was ſent thither.
of the guard chanced to be an Engliſhman, bu
rived in Ireland, he ſaid to the bailiffs, if this
land, I ſhould think this gentleman entitled to

don't know the laws of this country. However I think you had better looſen thoſe irons on his wriſts, or I think they may kill him.

Major Sirr, the defendant, ſoon arrived, went into his office, and returned withan order which he had written, and by virtue of which *Mr. Hevey* wasconveyed to the cuſtody of his old friend and gaoler, *Major Sandys*. Here he was flung into a room of about thirteen feet by twelve—it was called, the hoſpital of the provoſt.—It was occupied by ſix beds, in which were to lie fourteen or fifteen miſerable wretches, ſome of them ſinking under contagious diſeaſes. On his firſt entrance, the light that was admitted by the opening of the door, diſcloſed to him a view of the ſad fellow-ſufferers, for whoſe loathſome ſociety he was once more to exchange the chearful haunts of men, the uſe of open air, and of his own limbs; and where he was condemned to expiate the diſloyal hatred and contempt, which he had dared to ſhew to the overweening and felonious arrogance of ſlaves in office, and minions in authority; here he paſſed the firſt night, without bed or food. The next morning, his humane keeper, the *Major*, appeared. The plaintiff demanded, "why he was ſo impriſoned," complained of hunger, and aſked for the jail allowance. *Major Sandys* replied with a torrent of abuſe, which he concluded by ſaying—"Your crime is your inſolence to *Major Sirr*; however, he diſdains to trample upon you—you may appeaſe him by proper and contrite ſubmiſſion; but unleſs you do ſo, you ſhall rot where you are.—I tell you this, that if government do not protect us, by God we will not protect them. You will probably, (for I know your inſolent and ungrateful hardineſs,) attempt to get out by an Habeas Corpus; but in that you will find yourſelf miſtaken, as ſuch a raſcal deſerves." *Hevey* was inſolent enough to iſſue an Habeas Corpus, and a return was made upon it—"that *Hevey* was in cuſtody under a warrant from *General Craigh*, on a charge of treaſon." That this return was a groſs falſehood, fabricated by *Sirr*, I am inſtructed to aſſert.—Let him prove the truth of it, if he can. The Judge, before whom this return was brought, felt, that he had no authority to liberate the unhappy priſoner; and thus, by a moſt inhuman and audacious lie, my client was again remanded to the horrid manſion of peſtilence and famine.

Mr.

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Mr. Curran proceeded to deſcribe the feelings of *Mr. Hevey*, the deſpair of his friends—the ruin of his affairs—the inſolence of *Sandys*—his offer to ſet him at large, on condition of making an abject ſubmiſſion to *Sirr*—the indignant rejection of *Hevey*—the ſupplication of his father and ſiſter, rather to ſubmit to an enemy, however baſe and odious, than periſh in ſuch a ſituation;—the repugnance of *Hevey*—the repetition of kind remonſtrance, and the final ſubmiſſion of *Hevey* to their entreaties;—his ſigning a ſubmiſſion, dictated by *Sandys*, and his enlargement from confinement. Thus, ſaid *Mr. Curran*, was he kicked from his jail into the common maſs of his fellow-ſlaves, by yielding to the tender entreaties of the kindred that loved him, to ſign, what was in fact, a releaſe of his claim to the common rights of an human creature, by humbling himſelf to the brutal arrogance of a pampered ſlave. But he did ſuffer the dignity of his nature to be ſubdued by it's kindneſs;—he has been enlarged, and he has brought the preſent action. As to the facts that he had ſtated, *Mr. Curran* ſaid, he would make a few obſervations:—it might be ſaid for the defendant, that much of what was ſtated, may not appear in proof. To that, he ſaid, he would not have ſo ſtated, if he had not ſeen *Major Sandys* in Court; he had therefore put the facts againſt him in a way, which he thought the moſt likely to rouze him to a defence of his own character, if he dared to be examined as a witneſs. He had he truſted, made him feel, that he had no way of eſcaping univerſal deteſtation, but by denying thoſe charges, if they were falſe, and if they were not denied, being thus publickly aſſerted, his entire caſe was admitted—his original oppreſſion in the provoſt was admitted—his robbery of the cup was admitted—his robbery of the mare was admitted—the lie ſo audaciouſly forged on the Habeas Corpus was admitted—the extortion of the infamous apology was admitted.—Again, ſaid *Mr. Curran*, I challenge this worthy compeer of a worthy compeer, to make his election, between proving his guilt by his own corporal oath, or by the more credible modeſty of his ſilence. And now, ſaid *Mr. Curran*, I have given you a mere ſketch of this extraordinary hiſtory. No country governed by any ſettled laws, or treated with common humanity, could furniſh any occurrences of ſuch unparalleled atrocity, and if the author of Caleb Williams, or of the

Simple Story, were to read the tale of this man's ſufferings, it might I think humble the vanity of their talents, (if they are not too proud to be vain,) when they ſaw how much a more fruitful ſource of incident could be found in the infernal workings of the heart of a malignant ſlave, than in the richeſt copiouſneſs of the moſt fertile and creative imagination. But it is the deſtiny of Ireland to be the ſcene of ſuch horrors, and to be ſtung by ſuch reptiles to madneſs and to death. And now, ſaid *Mr. Curran*, I feel a ſort of melancholy pleaſure, in getting nearly rid of this odious and nauſeous ſubject. It remains to me only to make a few obſervations as to the damages you ought to give, if you believe the caſe of the plaintiff to be, as I have ſtated. I told you before, that neither pride nor ſpirit belong to our ſituation, I ſhould be ſorry to inflame you into any apiſh affectation of the port or ſtature of freedom or independence. But my advice to you, is to give the full amount of the damages laid in the declaration; and I'll tell you why I give you that advice: I think no damages could be exceſſive, either as a compenſation for the injury of the plaintiff, or as a puniſhment of the ſavage barbarity of the defendant, but my reaſons for giving you this advice, lye much deeper than ſuch conſiderations; they ſpring from a view of our preſent moſt forlorn, and diſaſtrous ſituation. You are now in the hands of another country, that country has no means of knowing your real condition, except from the information that ſhe may accidentally derive from tranſactions of a public nature. No printer would dare to publiſh the thouſand inſtances of atrocity, which we have witneſſed as hideous as the preſent, nor any one of them, unleſs he did it in ſome ſort of confidence, that he could ſcarcely be made a public ſacrifice by brutal force, for publiſhing, what was openly proved in a Court of Juſtice. *Mr. Curran*, here made ſome pointed obſervations on the ſtate of a country, where the freedom of the preſs is extinguiſhed, and where another nation, by whoſe indolent mercy, or whoſe inſtigated fury we may be ſpared, or ſacrificed, can know nothing of the extent of our ſufferings, or our delinquency, but by caſual hearſay. I know, ſaid he, that thoſe philoſophers have been abuſed, who think that men are born in a ſtate of war. I confeſs I go further, and firmly think they cannot be reclaimed to a ſtate of peace. When I ſee the conduct of man to man, I believe it.

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it. When I ſee the liſt of offences in every criminal code in Europe—when I compare the enormity of their crimes, with the ſtill greater enormity of their puniſhments, I retain no doubt upon the ſubject. But, if I could heſitate as to men in the ſame community, I have no doubt of the inextinguiſhable malignity, that will for ever inflame nation againſt nation. Well was it ſaid, that a "nation has no heart;" towards each other they are uniformly envious, vindictive, oppreſſive, and unjuſt. What did Spain feel for the murders or the robberies of the Weſt?—Nothing. And yet, at that time, ſhe prided herſelf as much as England ever did on the elevation of her ſentiment, and the refinement of her morality. Yet what an odious ſpectacle did ſhe exhibit? her boſom burning with all the fury of rapine and tyranny; her mouth full of the pious praiſes of the living God, and her hands red with the blood of his innocent and devoted creatures. When I adviſe you therefore to mark your feelings of the caſe before you, don't think I mean, that you could make any general impreſſion on the morality, or tenderneſs of the country, whoſe property we are become. I am not ſo fooliſh as to hope any ſuch effect; practical juſtice and humanity are virtues that require laborious acts, and mortifying privations; expect not therefore to find them; appeal not to them. But there are principles and feelings ſubſtituted in their place, a ſtupid preference and admiration of ſelf, an affectation of humanity, and a fondneſs for unmerited praiſe, theſe you may find, for they coſt nothing; and upon them you may produce ſome effect. When outrages of this kind are held up to the world, as done under the ſanction of their authority, they muſt become odious to mankind, unleſs they let fall ſome reprobation on the immediate inſtruments, and abettors of ſuch deeds. An Iriſh Lord Lieutenant will ſhrink from the imputation of countenancing them. Great Britain will ſee, that it cannot be her intereſt to encourage an infernal ſpirit of ſubaltern barbarity, that reduces man to a condition lower than that of the beaſt of the field. They will be aſhamed of employing ſuch inſtruments, as the preſent defendant. When the goverment of Ireland lately gave up the celebrated *O'Brien* to the hands of the executioner, I have no little reaſon to believe that they ſuffered as they deſerved on the occaſion. I have no doubt, but that your verdict of this day, if you

act as you ought to do, will produce a similar effect. And, as to England, I cannot too often inculcate upon you, that she knows nothing of our situation. When the torture was the daily and ordinary system of the executive government, it was denied in London, with a profligacy of effrontery, equal to the barbarity with which it was exhibited in Dublin; and, if the facts that shall appear to-day, should be stated at the other side of the water, I make no doubt, but very near one hundred worthy persons would be ready to deny their existence upon their honour, or if necessary, upon their oaths.

I cannot also but observe to you, continued *Mr. Curran*, that the real state of one country is more forceably impressed on the attention of another, by a verdict on such a subject as this, than it could be by any general description. When you endeavour to convey an idea of a great number of barbarians, practising a great variety of cruelties upon an incalculable multitude of sufferers, nothing defined or specific finds its way to the heart, nor is any sentiment excited, save that of a general erratic unappropriated commiseration. If, for instance, you wished to convey to the mind of an English matron, the horrors of that direful period, when, in defiance of the remonstrance of the ever to be lamented Abercromby, our poor people were surrendered to the lincentious brutality of the soldiery, by the authority of the state; you would vainly endeavour to give her a general picture of lust, and rapine, and murder, and conflagration. By endeavouring to comprehend every thing, you would convey nothing. When the father of poetry wishes to pourtray the movements of contending armies, and an embattled field, he exemplifies only, he does not describe; he does not venture to describe the perplexed and promiscuous conflicts of adverse hosts, but by the acts and fates of a few individuals he conveys a notion of the vicissitudes of the fight and the fortunes of the day. So should your story to her keep clear of generalities; instead of exhibiting the picture of an entire province, select a single object; and even if that single object do not release the imagination of your hearer from it's task, by giving more than an outline, take a cottage; place the affrighted mother of her orphan daughters at the door, the paleness of death upon her face, and more than its agonies in her heart; her aching eye, her

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anxious ear, ſtruggle through the miſts of cloſing day, to catch the approaches of deſolation, and diſhonour. The ruffian gang arrives, the feaſt of plunder begins, the cup of madneſs kindles in its circulation. The wandering glances of the raviſher become concentrated upon the ſhrinking and devoted victim.—You need not dilate, you need not expatiate; the unpolluted mother, to whom you tell the ſtory of horror, beſeeches you not to proceed; ſhe preſſes her child to her heart, ſhe drowns it in her tears, her fancy catches more than an angel's tongue could deſcribe; at a ſingle view ſhe takes in the whole miſerable ſucceſſion of force, of profanation, of deſpair, of death. So it is in the queſtion before us. If any man ſhall hear of this day's tranſaction, he cannot be ſo fooliſh as to ſuppoſe that we have been confined to a ſingle character, like thoſe now brought before you. No, Gentlemen; far from it; he will have too much common ſenſe, not to know, that outrages like this are never ſolitary, that, where the public calamity generates imps like theſe, their number is, as the ſands of the ſea, and their fury, as inſatiable as its waves. I am therefore anxious, that our *maſters* ſhould have one authenticated example of the treatment, which our unhappy country ſuffers under the ſanction of their authority; it will put a ſtrong queſtion to their humanity, if they have any, to their prudence, if their pride will let them liſten to it; or at leaſt, to that anxiety for reputation, to that pretention to the imaginary virtues of mildneſs and mercy, to which even thoſe countries the moſt diveſted of them, are ſo ready to aſſert their claim, and ſo credulouſly diſpoſed to believe that claim allowed.

There are ſome conſiderations reſpecting yourſelves, and the defendant, to which I ſhould wiſh to ſay a word. You may perhaps think your perſons unſafe, if you find a verdict againſt ſo conſiderable a perſon. I know his power, as well as you do—I know he might ſend you to the provoſt, as he has done the plaintiff, and forge a return on any writ you might iſſue for your deliverance—I know there is no ſpot in this devoted nation, (except that on which we now are,) where the ſtory of oppreſſion can be told or heard; but I think you can have no well founded apprehenſions. There is a time, when cruelty and oppreſſion become ſatiated and fatigued; in that ſatiety at leaſt, you will find yourſelves ſecure. But there is ſtill a better ſecurity for you: the gratitude

tude of the worthy defendant—if any thing could add to his honours, and his credit, and his claims, it would be your verdict for the plaintiff; for in what inſtance have you ever ſeen any man ſo effectually accredited and recommended, as by the public execration? what a man for inſtance, might not *O'Brien* have been, if the envy of the gibbet had not arreſted the career of his honours and preferments? In every point of view, therefore, I recommend to you to find, and to find liberally for the plaintiff. I have founded my advice upon the real circumſtances of your ſituation; I have not endeavoured to ſtimulate you into any ſilly hectic of fancied liberty. I do not call upon you to expoſe yourſelves by the affectation of vindicating the cauſe of freedom, and humanity; much leſs do I wiſh to exhibit ourſelves to thoſe, whoſe property we are, as indignant or contumacious, under their authority. Far from it, they are unqueſtionably the the proprietors of us, they are intitled of right to drive us, and to work us; but we may be permitted modeſtly to ſuggeſt, that for their own ſakes, and for their own intereſt, a line of moderation may be drawn. That there are exceſſes of infliction, that human nature cannot bear. With reſpect to her weſtern Negroes, Great Britain has had the wiſdom, and humanity to feel the juſtice of this obſervation, and in ſome degree to act upon it; and I have too an high opinion of that great, and philoſophical nation, not to hope, that ſhe might think us, not undeſerving of equal mildneſs; provided it did not interfere with her juſt authority over us. It would, I ſhould even think, be for her credit, that having the honour of ſo illuſtrious a rider, we ſhould be kept in ſome ſort of condition, ſomewhat bordering upon ſpirit, which cannot be maintained, if ſhe ſuffers us to be utterly broken down, by the malicious wantonneſs of her grooms and jockeys. *Mr. Curran*, concluded by ſaying, that the cauſe was of no inconſiderable expectation, and that in whatever light the Jury regarded it; whether with reſpect to the two countries, or to Ireland ſingly, or to the parties concerned, or to their own ſenſe of character and public duty, or to the natural conſequences that muſt flow from the event, they ought to conſider it with the moſt profound attention, before they agreed upon their verdict.

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LEONARD M'NALLY, Eſq.—Call *General Craig*, who being called three times, did not appear.

MR. M'NALLY—Call *Peter Craig*, Eſq. The affidavit of the ſervice of the Subpœna on that gentleman, was read in Court.

Mr. M'NALLY—Call *James Molloy*, Eſq.

JAMES MOLLOY, ESQ. *ſworn—examined by* MR. M'NALLY.

Q. Do you know *Major Sirr?*

A. I do.

Q. Do you know *Mr. John Hevey?*

A. Yes.

Q. Do you recollect being in the Commercial Buildings laſt September?

A. I do; there was ſome converſation between *Major Sirr* and *Mr. Hevey*, on the evening of the 8th of September—*Mr. Sirr* ſaid to plaintiff, "You ought to be hanged." On which *Mr. Hevey* ſaid, "You lie, but you ought to be hanged." I then ſaw *Mr. Sirr* come over from the place he was ſitting at, and take hold of *Mr. Hevey* by the collar, and ſaid, "I arreſt you in the King's name; I will commit you to priſon." This is as far as I can recollect; *Mr. Sirr* was not in my company. In the courſe of the converſation, *Mr. Sirr* ſaid to *Hevey*, "I know you, your name is *Hevey*."

Q. What did *Mr. Sirr* ſay to *Mr. Hevey*?

A. Why my Lord, there was different expreſſions made uſe of, which I do not recollect; when *Hevey* was told that *Major Sirr* ſaid, "he ought to be hanged," he turned about, and looked over at him, and *Mr. Hevey* has always rather a ſtrong ſtern look, but then it muſt be worſe, he replied to *Major Sirr*, "You lie; you ſaid, 'you ought to be hanged;' "and I will make you prove it."—*Sirr* then ſaid, "You ought to be hanged, and I dare ſay you and your party think ſo," or words to that purpoſe; and *Hevey* ſaid, "I am no party;"—then ſaid *Mr. Sirr*, "I arreſt you in the King's name;" and they came to the coffee-houſe door; and I turned about and left the paſſage open to them.—*Sirr* ſaid to *Hevey*, "You ought to be hanged,"—and then *Hevey* ſaid to *Sirr*, "You lie."—*Sirr* ſaid, "I arreſt you this moment in the King's name; and you muſt come with me."—*Hevey* then ſaid, "I will go out with you, where you pleaſe. *Hevey* and *Sirr* then went out of the coffee-room; and

d *Sirr* and *Hevey* walked arm in arm together through ame-ſtreet.—That is all I know of the tranſaction.

CROSS-EXAMINED BY WILLIAM FLETCHER, ESQ.

Q. You were at the ſame table with *Mr. Hevey*, when his converſation took place?

A. Yes—I afterwards came to the table where *Mr. Sirr* ſat.

Q. You are not very accurate in your recollection?

A. I recollect *Sirr* ſaying to *Hevey*, "You ought to be hanged."

Q. Did not *Mr. Sirr* ſay to *Hevey*, "Have you a protection?"

A. I do not recollect; he told *Hevey* he would commit him to priſon.

Q. Is not *Mr. Hevey* now in Newgate?

** A.* I have heard ſo.

Q. He is rather unfortunate. Did not *Mr. Sirr* ſay to *Hevey*, have you a protection—anſwer to that?

A. No, he did not.

Q. Did not *Mr. Sirr* ſay to *Hevey*, you have been a Yeoman?

A. I do not recollect that.

Q. I aſk you was *Mr. Hevey* a Yoeman?

A. I think he was in the Roebuck Cavalry.

Q. Was there any people you knew in the coffee-houſe, during this tranſaction?

A. There was.

Q. Who?

A. I cannot immediately call to my recollection.

Q. Did you ſee *Mr. Hall* in the commercial coffee-houſe?

A. He was there.

Q. Was *Mr. Hevey* a Yeoman?

A. I recollect ſeeing him in uniform; I believe he was a Yeoman.

Q. Have you not heard that *Mr. Hevey* was tried at Kilkenny?

A. I believe he was.

Mr. Curran—He was tried at Kilkenny, and was pardoned; and when *Mr. Sirr* ſaw him in September 1801, in the

* *Mr. Hevey* was at this time confined in Newgate, under ſentence of the City Quarter Seſſions, for a month's impriſonment, for having aſſaulted a *Mr. Labertouche*, with whom he had quarrelled about ſome words uſed by the latter in a tavern, reſpecting his tranſaction with *Major Sirr*.

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the commercial coffee-houſe, and had the converſation ſtated, then ſaid *Mr. Sirr*, "I arreſt you in the King's Name."

Counſellor Green—Did you not obſerve remarks made about an orange handkerchief during the evening?

A. None.

Q. Did you not ſee one in the hands of the plaintiff?

A. No.

Q. Nor any jarring obſervations?

A. None.

MR. SAMUEL RAINEY, *ſworn—examined by* COUNSELLOR ORR.

Q. Do you know *Mr. Sirr*?

A. I do.

Q. Do you know *Mr. Hevey*?

A. I do: I never ſaw him to know him before September laſt. I went to the commercial coffee-houſe on the evening of the 8th of September laſt. After ſome converſation, *Mr. Sirr* ſaid to *Mr. Hevey*, "I will let you know who I am." *Mr. Hevey* made anſwer and ſaid, "I defy you." Some other words paſſed, *Mr. Sirr* ſaid to *Mr. Hevey*, "You ought to be hanged,"—then *Mr. Hevey* anſwered, "By God you lie."—*Mr. Sirr* then ſaid, "I will make you prove it."

Q. Did *Sirr* tell *Hevey* what he arreſted him for?

A. Not that I heard—they went out together. I returned to the coffee-houſe.

CROSS-EXAMINED *by* WILLIAM PLUNKETT, ESQ.

Q. Do you know was *Mr. Sirr* a Magiſtrate for the County of Dublin?

A. I was told he was, and believe ſo.

Q. He was a good deal employed in taking up perſons who were active in the Rebellion?

A. I was told ſo.

Q. Had you not heard that *Mr. Hevey* was arreſted?

A. Yes.

Q. That he *Mr. Hevey* was active during the period of the Rebellion?

A. I have heard he was put on his trial.

Q. Did you not hear he was what was called an active citizen before the Rebellion?

A. I heard

A. I heard he was active.

Q. What do you mean by the word active?

A. (Counſellor Curran). Why to be ſure, he means an active young man—is it not ſo?

A. (Witneſs). Yes.

Q. Do you believe he was found guilty?

A. I cannot tell whether or not.

Mr. Barrington. The whole proceedings of the Court Martial, was ſet aſide by *Lord Cornwallis*, who reverſed the ſentence of the Court.

Mr. PATRICK MAGUIRE, *ſworn—examined by* COUNSELLOR WALLACE.

Q. Do you know *Mr. Sirr?*

A. I do.

Q. Do you know *Mr. Hevey?*

A. Yes.

Q. Do you recollect the month of September laſt?

A. I do.

Q. Have you heard of any thing which then happened to plaintiff?

A. Yes; he was taken into cuſtody by *Mr. Sirr*, and committed to the provoſt.

Q. Had you any difficulty in getting to ſee him?

A. Yes; by much, as I could not ſee him.

Q. Did you do any thing in conſequence?

A. I did; I went by the order of *Major Sandys*, to ſee *Mr. Hevey* in the provoſt. He ſaid he was in cuſtody of *Major Sandys*, under a warrant from *Mr. Sirr.*

Q. What did you then do?

A. I returned to *Major Sandys*, and ſaid to him, I wondered he would detain *Mr. Hevey*, on ſo trifling a matter—and *Sandys* replied, it was not a trifle to inſult *Sirr* who was in the truſt of government, and *Mr. Hevey* would be humbled, or elſe he ſhould ſtay where he was; that he ſhould make a public apology, e'se he would be enlarged; and if you call on *Sirr*, and tell him this is done, and if *Mr. Sirr* is ſatisfied, I will then diſcharge him on your interference.

Q. Did you call on *Sirr?*

A. I waited on him on the 9th of September, and he replied, he did not wiſh to hold him longer, but to ſhew you it was not *Hevey* that ſhould be detained, he ſaid, if I would

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find out the fellow who told *Hevey* what I ſaid, he would puniſh him. I then ſaid, if you write now to *Mr. Sandys*, he will diſcharge *Hevey*, and I required a letter, and he replyed, you will tell *Mr. Sandys*, by the ſame token, the laſt converſation I had with *Major Sandys*, in the caſtle-yard, was on *Hevey's* buſineſs, he will be diſcharged.

Q. Did you then call on *Sandys?*

A. I did.

Q. What did he then ſay?

A. He told me the token was right, and that if *Hevey* ſigned the apology he left him, he would diſcharge him, and deſired I would go into the room, and cauſe him to ſign ſaid paper.

Q. Did you then go?

A. I did.

Q. What ſort of a place did you ſee *Mr. Hevey* in?

A. I ſaw him in the provoſt priſon.

Q. Deſcribe the priſon, or where you have ſeen *Mr. Hevey.*

A. I cannot deſcribe it properly

Q. You muſt deſcribe it?

A. I ſaw *Mr. Hevey* in a ſmall room, (to the beſt of my recollection) where the firſt object I ſaw was a man, ſitting in a ſituation that delicacy prevents me from repeating, with a yellow ſhirt, and ſeemingly quite exhauſted. Five or ſix beds; in one of the beds was a man ſitting up in it, his perſon filthy and a long beard, with a ſoldier's old coat laid over his ſhoulders. I ſaw a third man walking about reading, I ſuppoſe it was a prayer-book, and he reading the office of the dead.

Lord Kilwarden. Did you ſee the book?

A. No, my Lord.

Q. Then how can you ſwear it was a prayer-book?

A. My Lord, I thought it was from the horrid appearance of the place; I was ſo alarmed, and the ſtench was ſo offenſive from the room, that I refuſed to go farther than the door, leaſt I ſhould get ſome diſorder, for the beds ſeemed to be full of people in ſickneſs. I ſpoke to *Mr. Hevey* about his dreadful ſituation, and requeſted him to ſign the apology that *Major Sirr* required, or to do any thing to get out of ſuch a place; which *Hevey* refuſed. I then went to *Sirr* in the caſtle-yard, and begged of him to liberate *Mr. Hevey.*

I told *Mr. Sirr* I would pay *Mr. Hevey's* expences. After ſome converſation, he ſaid, he had arreſted *Mr. Hevey* in vindication of his own honour, and ſaid he would leave it to *Mr. Sandys* to get *Mr. Hevey* diſcharged. *Mr. Sirr* gave me no note to *Mr. Sandys*, to get *Mr. Hevey* diſcharged; who I then told, that the friends of *Mr. Hevey* muſt get him liberated, by applying to the law for redreſs. I then went to *Mr. Sandys*, this was the next day after *Mr. Hevey* was arreſted. I ſaw *Mr. Sandys*, I told him what *Mr. Sirr* had ſaid, and *Mr. Sandys* ſaid, I muſt excuſe him—I am, ſaid he, in an awkward ſituation; as *Mr. Hevey* is confined under a General Officer's warrant, and that it muſt be an order from *Mr. Abbot* only, that could now do it.—However, if proper authority is left with me, I will diſcharge him forthwith; and he adviſed me to go into *Mr. Hevey's* room, to get him to ſign an apology; and then ſaid he, I will diſcharge him, but except he ſigns that paper, he ſaid he could not—he ſaid he would not diſcharge *Mr. Hevey*, unleſs he ſigned that apology. I then went to *Mr. Hevey* again, and intreated him to ſign the apology; at firſt he refuſed, but at laſt he ſaid, he would ſign it; and he having ſigned it, we parted. *Mr. Sandys* told me, that if *Hevey* ſigned the apology, he would have him diſcharged that day.

Q. When was *Mr. Hevey* liberated?

A. On the 11th of September, about twelve o'clock at noon.

CROSS-EXAMINED *by* JONAS GREEN, ESQ.

Q. Was you preſent at the converſation between plaintiff and defendant in the commercial coffee-room?

A. I was not.

Q. You ſay that *Mr. Hevey* objected at firſt to ſign the apology?

A. Yes—but he afterwards ſigned an apology to *Major Sirr*.

Q. You called at the priſon to ſee *Mr. Hevey?*

A. I did.

Q. Did you ſee *Mr. Sirr* there?

A. I never ſaw *Mr. Sirr* there.

Q. Are you a relation to *Mr. Hevey?*

A. No: but I have been in habits of intimacy with him a conſiderable time back.

Q. You

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Q. You have been in company with him?

A. Yes.

Q. He was a Yeoman?

A. Yes: I ſaw him in uniform.

Q. When did he ceaſe to be a Yeoman?

A. Some time about the year 1799; I do not know the time preciſely.

Q. Did you ever hear of any act done by him, before that period?

A. I had been out of the kingdom, and returned 1ſt of June 1798. I was not a Yeoman.

Q. Have not you heard, that *Mr Hevey* was brought to trial at Kilkenny?

A. I have heard it, and do believe it to be the caſe.

Q. Did you hear that *Mr. Hevey* was ſentenced to tranſportation out of the kingdom for ſeven years?

A. Yes: but to what part of the world I never heard.

Q. Did you never hear that *Hevey* had been confined in the Royal Exchange?

A. I was not preſent, if he was confined in the Royal Exchange.

Q. Did you not hear he was taken up as a ſuſpected Yeoman?

A. I never heard that to my knowledge—I am poſitive I never heard it.

Q. Have you heard why the ſentence of tranſportation was not put in execution?

A. I cannot anſwer that queſtion.

Lord Kilwarden—You cannot aſk the witneſs as to the motive that induced *Lord Cornwallis* to liberate that man; it has been ſtated he was liberated by *Lord Cornwallis*, of courſe, *Hevey* has been forgiven. The witneſs cannot know the motive that produced his Lordſhip's clemency.

Q. Did *Hevey* make an apology to *Mr. Sirr?*

A. No—here is an apology drawn up by *Major Sandys*, which *Mr. Hevey* would not ſign.

Whereas I, on the night of the 8th of September laſt inſtant, in the coffee-room of the Commercial Buildings, made uſe of improper expreſſions to *Mr. Sirr*—I am very ſorry for it, and beg your's *(Mr. Sirr's)* pardon, and aſſure you, I had, nor have not, any wiſh to inſult any Officer

of

of this Government; to whose clemency I owe my releaſe from a ſentence of a Court-martial, by reverſing the ſentence inflicted on me, by that Court-martial, &c.

11th September 1801.

Mr. Fletcher. There was an apology made by plantiff.

A. There was one ſigned by *Hevey*, here it is.

Mr. Green. So far as it is the act of the Party, it may be read; here is the paper, ſigned by *Hevey* himſelf.

Sir, I replied haſtily to an officer of Government ſome nights ago, for which I am ſince confined; I am ſorry by ſo doing, it has gave offence to government.

11th September, 1801. *I am Sir,*

To *Yours, &c. &c.*

Major Sandys. *JOHN HEVEY.*

Mr. Curran. Here was not any thing like an authority to diſcharge him.

Lord Kilwarden. At preſent I think *Mr. Sandys* acted merely as Agent of *Mr. Sirr*—he was committed to his cuſtody by *Mr. Sirr.*

Mr. Barrington. There was no charge of High Treaſon againſt *Mr. Hevey* in September laſt.

Council for Defendant. We have the evidence of the former witneſs he did ſay, that *Mr. Sirr* ſaid, he did not want any apology at all; and when he heard that *Mr Hevey* ſaid he would appeal to the law; then ſaid *Mr. Sirr* to the witneſs I will go to *Mr. Abbot* and get the man releaſed.

Court. Do you reſt the caſe here on the part of the plaintiff.

Council for Plaintiff. Yes, my Lord.

William Fletcher Eſq. My Lord and Gentlemen of the Jury, In this caſe I am of Council for *Major Sirr*, the defendant in this action. Gentlemen of the Jury, I would have been the laſt man, that would have been called upon as Council for the defendant, had he been that man as has been repreſented to you. This action is brought to recover the enormous ſum of £5000; that ſum my eloquent and ingenious friend *Mr. Curran* has told you is ſo trivial, that you ought to find the verdict to the full amount of the damages laid in the declaration; he has in this ſtatement mentioned many things that are totally irrevelent to the preſent caſe. He has lamented that the damages were not laid at

£10,000.

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£10,000. He has attributed the conduct of my client to the plaintiff, as if malice was prevailing in his mind, against the plaintiff; such an assertion is not capable of being given in a proof on an action for an assault; but malice had no share in the transaction; we cannot give in evidence the intentions of a man; no; to harbour a malicious intention would degrade the dignity of human nature. He was incapable of feeling resentment against the plaintiff. The defendant did know, that there had been the sentence of transportation awarded by a court-martial, held at Kilkenny, against a man of the name of *Hevey*; but as to any knowledge the defendant had of him, he was ignorant as he is of a man in South America. *Mr. Sirr* was informed, in the coffee-room of the Commercial Buildings, that such a man sitting there, was of the name of *Hevey*; and recollecting there was a man of that name tried at Kilkenny; he did, after some little conversation, ask him was he not once in the Provost Marshalsea, and had he not been tried and found guilty at Kilkenny; and asked him to shew his protection; and to account why he was found at large; *Hevey* refused to give defendent any satisfactory answer; and then *Mr. Sirr* told him, if he did not, he must arrest him till he found out the truth; and for this conduct of the defendant, the plaintiff now applies to you, Gentlemen of the Jury, to be recompensed in damages to the amount of £5000. I shall not, Gentlemen, attempt to display that profusion of eloquence, you have heard from my ingenious and learned friend; but I will state the facts that will appear in evidence, on behalf of the defendant, my client in this case; and you will consider, what injury the defendant has sustained; before you on your oaths would find a verdict to the amount of the enormous sum of £5000. You will consider the evidences which have, and those that will be produced to you. There have been many circumstances mentioned in the statement of plaintiff's case, by his ingenious advocate, that are incapable of being given in evidence. You may therefore venture to put out of your minds three-fourths of the statement, there being as I have already mentioned, many circumstances stated, that could not be sent up to you for your investigation and consideration. We shall produce evidence to prove facts of a public nature—as

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to common-fame, it is no foundation to ſtate to Gentlemen of your underſtandings, any facts grounded on reports of common-fame—I muſt obſerve to you Gentlemen, that my learned friend has ſtated to you, that the Liberty of this Country, was in danger of being deſtroyed; as if Liberty was only to be found within theſe walls;—but I truſt this repreſentation is not the caſe, for Liberty exiſts in every part of Ireland, as well as within theſe walls, and the Liberty of the Preſs is preſerved inviolable, and I doubt not but you may read, in ſome of the News-papers that may be publiſhed in a few day's, that there was on ſuch a day, a Trial wherein *Mr. Hevey* was plaintiff, and *Mr. Sirr* defendant, on an action for an aſſault, and falſe impriſonment, when *Mr. Curran* diſplayed his uſual great abilities, on behalf of his client, with amazing eloquence and energy, and the witneſſes were produced, to prove the facts ſtated by the learned Council, when it appeared, the Jury did not give credit to their teſtimony, for they found a verdict in favour of the defendant; peradventure ſuch a paragraph may appear in the Public News-papers; for I have no doubt, but that you will find your verdict in favour of my client; and againſt the plaintiff in this action. I ſhall not, Gentlemen of the Jury, ſtate any thing on the part of my client, *Mr. Sirr*, that will not be proved in evidence; it appears that the defendant accidentally went into the coffee-houſe of the Commercial Buildings, with ſome other Gentlemen, they ſat down and took coffee, and there happened to be ſitting in the ſame coffee-room, the plaintiff in this action, and ſome perſon having ſaid, you live ſir a good deal in the country where perſons live who were accuſed of being active in the late Rebellion; to which *Mr. Sirr* replied, I am not in the leaſt afraid of any of them. It was then pointed out, that there was a man in the room of the name of *Hevey*, who had been charged and tried on an accuſation of that nature, and had been ſentenced to tranſportation; to which *Mr. Sirr*, in a low voice made anſwer, "he deſerved to be hanged," and then ſome buſy intermeddling officious perſon, went to *Hevey* and told him what *Mr. Sirr* in a low voice had ſaid; and then the converſation took place which will be given in Evidence—I demand to ſee your protection; you know me—yes ſaid plaintiff, I know you are *Major Sirr*; but would give him no anſwer, as to

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ſhewing how he became at large; and when *Mr. Sirr* brought him to his Office, in the Caſtle-yard, he again aſked him, to ſhew his protection; and then plaintiff in a ſwaggering bluſtering manner ſaid; "as to my protection go aſk your "betters for it." Now if *Mr. Hevey* had thought proper of telling *Mr. Sirr*, true it is, I was tried at Kilkenny, and was found guilty, and was ſentenced to tranſportation, but I have been by *Lord Cornwallis*; ſet at Liberty;—if *Mr. Hevey* had mentioned thoſe words to *Mr. Sirr*, you never would have heard of this action. See Gentlemen the evidence, that has been given on the part of the plaintiff, in ſupport of this action; the firſt witneſs was *Mr. Molloy*—the ſecond was *Mr. Rainey*—and the third witneſs was *Mr. Maguire*. Here the learned Council on the part of the defendant, with great accuracy and perſpicuity, recapitulated the teſtimony that thoſe three Gentlemen had given, on their direct and croſs examination; which the reader will ſee ſet out in *the verba* in the foregoing part of this Report; therefore deemed unneceſſary to repeat it. It does appear, that in the courſe of the converſation, *Mr. Sirr* did aſk *Hevey* to ſhew his protection; if any he had, which *Hevey* refuſed to do, and the ſaid witneſſes ſaid, that *Mr. Sirr* did ſay to *Hevey*, "you deſerve to be hanged," and *Hevey* anſwered "you lie, you are a liar." This is not the caſe of an ordinary perſon; here was a man that had been accuſed of High Treaſon, to the defendant's own knowledge, he had been tried for that offence, and had been convicted; and he afterwards appeared at large; and defendant ſeeing him at large, aſked him to ſhew his certificate of a pardon; or ſaid he, I muſt detain you till I inveſtigate, whether you ever received a pardon or not; and on *Hevey* ſtill refuſing to give the defendant any ſatisfactory anſwer, he did hold him in cuſtody, as one of his Majeſty's ſubjects, he had a right to do; if ſuch man had been charged with High Treaſon, and refuſed to give an account how he came to be at large. A private individual may ſeize a perſon charged with High Treaſon, and bring him before a Magiſtrate; it has appeared in evidence, that it was a matter of public notoriety, that the defendant was a Magiſtrate, and had been very active in the apprehenſion of a great number of perſons charged with High Treaſon, at the time of the late Rebellion; and this country owes much of its preſent tran-

quillity, to the very great exertions and laudable efforts of the defendant, to cruſh that Rebellion, Mr. *Sirr* appears not to be negligent of his duty, he knew that a man of the name of *Hevey* had been in 1798, accuſed of High Treaſon, and ſeeing a man of that name pointed out to him in the commercial coffee-houſe, aſked *Mr. Hevey* was you not in the Provoſt Priſon, and was you not tried and convicted of High Treaſon; ſhew me by what authority, you are at large; how eaſy was it, for *Mr. Hevey* to ſay, I am that perſon; and ſince the Trial was had, *Lord Cornwallis* has given me a free pardon. Gentlemen of the Jury, you will judge of this caſe, merely upon the evidences adduced to you, and not from any ſtatement of the Council, on one ſide or on the other; I am ſure, you muſt have it in your recollection, the mild and lenient Government of this country, under the adminiſtration of the *Marquis Cornwallis*; he did think proper in mercy to reverſe the ſentence of ſeveral Courts-martial, where perſons charged with High Treaſon were found guilty; he liberated from death many perſons, and ſurely a man ſo liberated, could eaſily have ſaid, "I have been pardoned through the clemency of the *Marquis Cornwallis*," and therefore the ſentence of the Court-martial was not carried into execution; and thus *Mr. Hevey* would have been cleared from any ſtigma whatſoever.—It will appear moſt clearly in evidence, that the arreſting of *Hevey* by *Mr. Sirr*, in the commercial coffee-houſe was not through wantonneſs, or maliciouſneſs—*Mr. Hevey* has been ſince enlarged, and that alſo appears to be the fact. The plaintiff has not attempted by a ſingle ſintillo of evidence to ſay, he was arreſted wantonly or maliciouſly. You are to preſume, that the Government of this country acted wiſely, and mercifully in pardoning many perſons who had been found guilty by Court's-martial, of High Treaſon—you have no evidence, on which you can infer, that *Mr. Sirr* arreſted *Mr. Hevey* out of malice; or for the gratification of any purpoſe of his own. The learned Judge who now tries the cauſe, will correct me, in point of law, in any matter in which I may miſtake;—but, I hold the law to be, that a Magiſtrate does not do his duty, as ſuch, who, if told a man charged with High Treaſon, and convicted, is ſeen at large, does not enquire why he appears at large. Gentlemen of the Jury, it is a matter of notoriety,

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notoriety that *Mr. Sirr* was an active Magiſtrate during the time of the late Rebellion; and by his exertions in apprehending rebels, he did eſſentially contribute to ſave this commercial country, from ſcenes of blood. You cannot preſume that *Mr. Sirr* knew the fact, that *Lord Cornwallis* had pardoned *Hevey*; and yet knowing that fact he apprehended *Hevey* out of malice. You are not intitled to make ſuch a preſumption; for the law will not permit you ſo to do—this man did ſtand his trial on a charge of High Treaſon; and the Court-martial found him guilty; that was a fact, known to defendant—he was afterwards pardoned, that was a fact that was then not known to defendant—and therefore he aſked *Hevey* had he a protection, and if he had, to produce it. At the time of the Rebellion, the trial by Court's-martial, of perſons accuſed of Treaſon, was expedient and it was judged ſo, by the Legiſlature; to ſuppreſs the Rebellion, there was at that time particular duties entruſted to particular perſons; and in the exerciſe of a particular duty, ſeveral matters came under the diſcretion of the perſon in diſcharge of that duty; and the law will preſume a Magiſtrate acts uprightly, unleſs the contrary is proved. Perſons employed in the exerciſe of a perticular duty, may from proper, fair and laudable motives enquire of a man whom he knew was convicted by a Court martial, why he appears at large; the man could eaſily have ſaid, I have received a pardon from *Lord Cornwallis*. Would you not give a man credit for making ſuch an enquiry? A man may have been charged with Treaſon in 1798, he may have been tried; the evidences may have been miſtaken in the man, he may by miſtake, be found guilty; but when the proceedings of a Court-martial were laid before the *Lord Lieutenant*, he may ſet aſide the ſentence, and liberate the man; as not being a man active in the Rebellion; although charged with being ſo; for a perſon is perſumed innocent, until the contrary appears.

Gentlemen of the Jury, let me aſk you, what evidence has there been laid before you, ſufficient for you on your oaths to find, that *Mr. Sirr* acted from malicious motives towards the priſoner?—it is, for the ſearcher of all hearts alone, to inveſtigate the motives of human actions.—In the preſent caſe, however, it appears to be developed by the man himſelf, you have evidence under his own hand, that

he had been charged with the crime of High Treaſon, and was found guilty; and received afterwards his pardon through the clemency of the late Lord Lieutenant. It does not appear, that *Mr. Sirr* had any malice towards him; he met him accidentally in the coffee-room; he took him to his office in the caſtle-yard, and aſked him his name and reſidence; and then ſaid, as you were tried and convicted, ſhew me your protection, if you have one; but *Hevey* inſtead of producing the certificate to *Mr. Sirr*, or directing him where he could ſee it, bid him aſk his betters for it. As to the plaintiff having a favourite mare, taken from him by any perſon, no evidence of it has been given; and therefore I do not know what foundation there was, to introduce any thing about her in this caſe. Let me aſk you, on what ground is my client to be deprived of the common benefit in this caſe? are you to ſuppoſe there was malice in *Mr. Sirr's* mind againſt the plaintiff. By the general law of the land, you cannot impute malice unleſs proved; and the evidence is totally ſilent, as to the charge of malice.—On what ground then, are you to find a verdict for the enormous damages of £5000?—By the general rule of evidence, every man ſhall be deemed innocent, until the contrary appears; my client therefore ſhall have the benefit of the law, which every other man has. As to what has been given in evidence, reſpecting *Mr. Sandy's* conduct to *Hevey*, my client is not called upon to anſwer for the conduct of *Mr. Sandys*; *Mr. Sirr* is only accountable for his own conduct; I am not vindicating *Mr. Sandys*, the plaintiff is at liberty to bring an action againſt *Mr. Sandys*, if he thinks proper. It appears that *Mr. Sandys* is the keeper of the priſon, called the provoſt, a priſon appropriated for the ſafe cuſtody of perſons charged with the crime of High Treaſon. In the period of 1798, *Mr. Hevey* was charged with the crime of High Treaſon, and he was brought to the Royal Exchange in cuſtody, and from thence taken to the provoſt—he was brought to trial, convicted and afterwards pardoned. I ſee no ground on which the learned Gentleman who preceded, beſtowed the phillipic on the Government of this country—we have the ſame liberty remaining among us, we ever had. In the year 1798, this country was infected with a hoard of vipers, who were guilty of rebellious practices, againſt the liberty and welfare of their own country. The liberty of this country, and the peace of this country is now reſtored. The liberty of the preſs is

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as much revered and eſteemed now as in any age whatſoever; you will no doubt ſee in the news-paper, for the preſs is not ſilent, a paragraph, ſtating, that this day a caſe was tried, of *Hevey* verſus *Sirr*; in which caſe *Mr. Curran* appeared of council for the plaintiff, and in the moſt eloquent ſpeech we ever remember to have heard, made ſome ſtrictures on the Government of this country, in very ſtrong terms, and repreſented that the defendant ought to be aſſeſſed in very heavy damages; we have only to lament that the Jury was not of that learned councils opinion, for they found a verdict againſt his client.

In truth, Gentlemen of the Jury, you are to decide this caſe upon the evidences: *Mr. Maguire* has told you what paſſed in the priſon of the provoſt; but it was the other two witneſſes, who gave evidence of the arreſt of *Mr. Hevey* in the Commercial Buildings. As to *Mr. Hevey* being put into the room where perſons were lying ill with infectious diſorders, and where it appeared a man was lying ſo ill, that he ſaw a perſon reading prayers by him, as the witneſs believed —if *Mr. Hevey* was put into ſuch a room, that is to be imputed to *Mr. Sandys*, and not to *Mr. Sirr*; for my client had nothing to do with it. *Mr. Sirr* was not the keeper of that priſon; there is no charge that *Mr. Sirr* put the plaintiff into that room; for the actions of *Mr. Sandys*, my client is not anſwerable. *Mr. Maguire* did tell you he had long been intimate with plaintiff, and then *Mr. Hevey* did ſign the apology to *Mr. Sirr*, which has been read in evidence. If any thing was done improperly to *Mr. Hevey* when in the provoſt, why does not *Mr. Hevey* proſecute *Mr. Sandys* for it? why did he not bring his action againſt *Mr. Sandys*, and not make that a charge, to increaſe the damages as againſt *Mr. Sirr!*—As to what paſſed in the Commercial Buildings, I muſt obſerve that *Mr. Sirr* was well known to be a public Magiſtrate; he it was, who was inſulted in the execution of his office by *Mr. Hevey*—that is an indictable offence of common law. *Mr. Hevey* has now thought fit to bring an action of damages againſt my client, becauſe *Hevey* who had been found guilty, by a Court Martial, appeared at large, without aſſigning any reaſon, when aſked by the defendant, why the ſentence of the Court Martial had not been put in execution againſt the plaintiff.—The plaintiff after abuſing the defendant in the manner the witneſs has told you, now calls

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on you, Gentlemen of the Jury, to give him a verdict of £5000 damages. You are not prepared to ſay what evidence appeared before the Court Martial on the trial; but you are prepared to ſay, that the Lord Lieutenant was inveſted with the power of reverſing the ſentence of the Court Martial, and pardoning the priſoner of any crime committed by him. We do know that Courts Martial were inveſted with power to try perſons accuſed of High Treaſon—the Courts Martial were inveſted with that power, by the Government of this country, and by the act of the Legiſlature paſſed in 1798; ſuch was then the unhappy turbulence of the times, as rendered it neceſſary, in order to cruſh the rebellion. *Hevey* was found guilty by a Court Martial, he was afterwards pardoned; and he is now to be conſidered as innocent. We muſt, however preſume, the ſentence paſſed by the Court Martial was right, according to the evidences which then appeared before that Court, although it was not ſigned by the Lord Lieutenant, who did not think proper to carry the ſentence into effect. But let me aſk you, Gentlemen of the Jury, is Mr. *Hevey* now to be conſidered as an injured man, to faſten this impreſſion on your minds, that he had not committed any offence. It has been ſaid by my learned friend, you will judge what degree of criminality attached upon Mr. *Sirr*, for committing the aſſault and falſe impriſonment laid in the declaration. But Gentlemen of the Jury, you will be told by the noble and learned Judge, who preſides on this trial, what the law in this caſe is, and as to the facts, you will judge from the evidences, whether you on your oaths can be juſtified, in finding a verdict againſt *Mr. Sirr*. The notoriety of *Mr. Sirr*'s exertions to cruſh the late rebellion, has been noticed, with more than trumpet tongues; it is notorious he did exert himſelf to find out and apprehend thoſe who in the time of the rebellion, met for the worſt of purpoſes. Do you think that *Mr. Hevey* has deſerved credit for his conduct, and therefore merits that you ſhould give him the exceſſive damages of £5000? It is becauſe the ſentence of the Court Martial has not been carried into execution againſt him, that therefore you are to give him the enormous damages of £5000?—The act of amneſty did protect perſons of his deſcription, for it muſt now be taken for granted, that he had been once a traitor, and a double traitor, becauſe he as a Yeoman, at the very inſtant

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inſtant he was charged with the crime of High Treaſon. It muſt ever be remembered with gratitude, that it was by the exertions of the Yeomanry of Ireland, the late rebellion has been cruſhed. If your Lordſhip thinks, that in point of Law, there ought to be any verdict againſt the defendant, then, Gentlemen of the Jury, you will judge whether the damages ought to be to any amount; or only nominal, as 6d. damages. We will go into evidence, on the part of the defendant, and it is with confidence, I commit my client's caſe to your conſideration.

William Plunkett, Eſq.—Call *John Goulding*.—We call him to ſhew, that the plaintiff *Hevey* was a Yeoman, and that he being then in the year 1798 a Yeoman, was charged notwithſtanding, with being active in the rebellion, and was liable to be apprehended, and tried on that charge.

Lord Kilwarden—If Mr. *Sirr* had a reaſonable ground to ſuſpect a man guilty of treaſon, he ought in point of Law, to carry the man before a Magiſtrate.—Did Mr. *Sirr* do ſo—is that the ground of your defence?

Council for Plaintiff—We do not admit that Mr. *Hevey* had been a Yeoman.

MR. HALL, *ſworn*.

Q. Do you know Mr. *Sirr*?

A. I do.

Q. Do you know Mr. *Hevey*?

A. Yes; the firſt time I ſaw him was on the night of the 8th of September laſt, at the commercial coffee-houſe. I was there, at the beginning of this buſineſs.

Q. What paſſed?

A. I was in the coffee-room, and Mr. *Sirr* came in and he ſat down, and talked on different ſubjects; but particularly about a houſe he had lately taken at the foot of the mountains; and I told him I was ſurpriſed he would take a place there, as the boys might pay him a viſit.—He replied, "He was not afraid of rebels in any place; and there is one of them," looking over at Mr. *Hevey*, who was at another table; Mr. *Sirr* ſpoke in ſo low a voice, as ſcarcely to be heard, Mr. *Hevey* then came up, and ſaid to Mr. *Sirr*, "you ought to be hanged;" meaning the Major—Major *Sirr* then ſaid, "were you not confined in the provoſt?"—*Hevey* ſaid,

ſaid, "many better man than either you or I was ſo; and I ſay, you ought to be hanged."—Major *Sirr* then repeated that *Hevey* ought to be hanged—then *Hevey* ſaid to Mr. *Sirr*, aſſign your reaſon, I defy you; I think you ought to be hanged"—The Major then ſaid, "I dare ſay you and your party think ſo; and *Hevey* ſaid then to Mr. *Sirr*," "You are a liar, I am of no party"—and Major *Sirr* aſked where he lived, and *Hevey* then ſaid, he lived in Thomas-court.

Q. Did any thing elſe paſs relative to any trial?

A. Not at that time.

Q. Did you ſee any thing elſe paſs.

A. Mr. Sirr ſaid to *Hevey*, ſhew me how you got out of the Provoſt—Mr. *Sirr* then took *Hevey* down, the Caſtle-yard—they walked down ſtreet arm in arm; I followed them to the Caſtle-yard. *Hevey* refuſed to give Mr. *Sirr* any account, but ſaid, he would go with Mr. *Sirr* where he pleaſed.

Q. Was he handcuffed.

A. No, I followed them to Mr. *Sirr's* Office in the lower Caſtle-yard—Mr. *Sirr* there ſat down in a chair, and aſked *Hevey*, is your name *John Hevey*; Mr. *Hevey* ſaid it was; Mr. *Sirr* then aſked him where do you live, Mr: *Hevey* anſwered in Thomas-court; Mr. *Sirr* then aſked him, was you ever tried at Kilkenny—Mr. *Hevey* anſwered, he was; then ſaid Mr. *Sirr*, ſhew me how you came to be at large, or will commit you to the Provoſt. Mr. *Hevey* then ſaid to Mr. *Sirr*, go aſk your betters. Mr. *Hevey* would not anſwer Mr. *Sirr* any queſtions whatſoever; Mr. *Hevey* was then taken to the Provoſt; Mr. *Sirr* ſaid to Mr. *Hevey*, I ſuppoſe you could give me ſome anſwer. Mr. *Sirr* frequently aſked Mr. *Hevey* to give him ſome account, Mr. *Hevey* bid Mr. *Sirr* to aſk his betters, and then ſaid, he would anſwer no queſtion whatſoever. I then went and addreſſed Mr. *Hevey*, and begged him to ſatisfy Major *Sirr*, and if he had not his protection about him, that I would go with pleaſure to get it for him; or would call on any friend to come to him, ſo as to get him out of his ſituation; he refuſed my interference; Major *Sirr* then went over to his deſk and took out ſome paper, and *Hevey* was ſent by a guard of ſoldiers to the Provoſt—Mr. *Hevey* was not handcuffed; Mr. *Sirr* remained behind with me.

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CROSS-EXAMINED BY MR. CURRAN.

Q. You was talking in the commercial coffee-houſe with Mr. *Sirr* about his country houſe?

A. Yes.

Q. I ſuppoſe it is a very fine houſe, no doubt.

A. Why I cannot ſay, I have never ſeen the inſide.

Q. You won't be long ſo Mr. *Hall*, you'll ſoon receive a card of invitation—what profeſſion are you.

A. I am an Attorney.

Q. Are you not in the office of Mr. *Heppenſtal.*

A. I am.

Q. Are you not a clerk to Mr. *Heppenſtal.*

A. I am, but I have ſome private property.

Q. I ſee you are a gentleman of good ſenſe—had Mr. *Sirr* an idea at firſt of arreſting Mr. *Hevey.*

A. I ſuppoſe he had no idea of taking Mr. *Hevey* into cuſtody; he would not deſcend to take Mr. *Hevey* into cuſtody; for he did not know *Hevey* or he would not have aſked him his name; if he had known *Hevey* he might have taken him at the time he ſtood up to him—*Mr. Sirr* ſaid he did not know he was the man, this forms a reaſonable belief, that he had no intention of arreſting him for *Mr. Sirr* did not appear to have known *Mr. Hevey* when he firſt ſaw him in the coffee-room.

Q. Your evidence is, that you believe *Mr. Sirr* did not know *Mr. Hevey*, and therefore you believe that *Mr. Sirr* did not intend to take *Mr. Hevey* into cuſtody.

A. Yes, he knew the man when he ſaid his name was *Hevey*; and becauſe he ſaid, he had been tried at Kilkenny.

Q. Do you believe he gave any authority, and why he committed *Mr. Hevey* to the Provoſt.

A. Mr. Sirr did write ſome paper and delivered it to the guard, who went with *Mr. Hevey* to the Provoſt.

Q. Do you believe it was under the authority of *Mr. Sirr*, that *Mr. Hevey* was committed.

A. Moſt undoubtedly.

Q. Was there an application to *General Craigh* made for a warrant.

A. There was no time for ſuch application by the *Major* until the committal—I do not believe *Mr. Hevey* was ſent to the Priſon under the authority of *General Craigh*; I do

believe *Mr. Hevey* was ſent to priſon, without the knowledge of *General Craigh* at that time.

Q. Do you believe he was committed to the provoſt by *Mr. Sirr?*

A. I do.

Q. Do you believe that *Mr. Hevey* had been living in the City of Dublin for ſome time; and carried on the buſineſs of a Brewer?

A. I do not know, I cannot form a belief.

Q. Did you ſee the ſentence of the Court Martial at Kilkenny?

A. I ſaw a copy of the ſentence of the Court Martial, but not the original.

Q. Do you believe *Mr. Hevey* was ſet at liberty by the Lord Lieutenant.

A. I do believe it.

Q. What is your reaſon for believing it?

A. I ſaw *Mr Hevey* at his liberty.

Q. Was *Hevey* diſcharged by the Lord Lieutenant?

A. It was ſo mentioned in the copy I ſaw; *Hevey* not being active in the rebellion.

Q. What was the Court Martial's opinion of *Hevey's* criminality?

A. I cannot anſwer that.

Q. Do you make a defence for *Mr. Sirr?*

A. I am ſure I do not.

Q. Was *Mr. Hevey* enlarged on giving ſecurity?

A. I ſhould ſuppoſe ſo; I cannot form a belief about it.

Q. Do you believe he was ſerious in the apology he made to *Mr. Sirr?*

A. I heard in court this day, that *Mr. Sirr* had refuſed to accept of any apology.

Q. Do you know *Mr. Sandys?*

A. Yes.

Q. Do you believe he is in court?

A. I believe ſo.

Q. Upon the whole of this tranſaction, had *Hevey* a reſentment to *Mr. Sirr?*

A. From the contents of the apology I ſhould ſuppoſe not.

Lord Kilwarden.—This Gentleman ſays, that *Mr. Hevey* was ſet at liberty, and that *Mr. Sirr* refuſed to accept the apology.

Q. Was

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Q. Was the certificate ſent to *Mr. Sandys*, to diſcharge *Mr. Hevey?*

A. I ſuppoſe it was lodged with *Mr. Sandys* or he could have no power to diſcharge him.

Q. *Mr. Sirr* muſt have known it?

A. I believe he muſt have heard it.

Q. What brought you to *Mr. Sirr's* office?

A. I went merely out of curioſity.

Q. You believe that *Mr. Hevey* has been diſcharged regularly.

A. *Mr. Sirr* muſt have believed it as well as me.

Q. Do you believe that *Mr. Sirr* knew at the time of the arreſt, that *Mr. Hevey* had been regularly diſcharged?

A. I believe he might not then have known it?

Q. Do you believe that was the caſe?

A. Yes.

Q. Did you ſee the original order by the *Lord Lieutenant*, to diſcharge *Mr. Hevey?*

A. I ſaw a copy of it.

Q. When was *Mr. Hevey* tried at Kilkenny?

A. In 1798.

Q. How long did he remain in priſon?

A. I do not know how long.

Q. Did not the *Lord Lieutenant* go into the country, and there releaſe many priſoners?

A. He ſurely did.

Q. Had priſoners diſcharged any protections given them?

A. Almoſt all the rebels who were diſcharged, had protections; I ſuppoſe ſo.

Caſe reſt on the part of the defendant.

Mr. Plunkett.—*Mr. Hevey* had been brought up before *Mr. Juſtice Chamberlaine*, and the return was, that he had been arreſted by the authority of *General Craigh.*

WILLIAM PLUNKET, Esq.

MY LORD, AND GENTLEMEN OF THE JURY,

In this caſe I am Council for *Major Sirr.* This is an action brought by plaintiff, for arreſting him in the coffee-houſe of the Commercial Buildings.—I was in hopes it would not have been neceſſary for me to addreſs you; had it not been that my learned friend, *Mr. Barrington.*, mentioned

his intention of addreſſing you on the part of his client; it therefore becomes my duty to offer a few words to you on the part of *Major Sirr*. My Lord, and Gentlemen of the Jury, this is an action brought by Mr. *Hevey* the plaintiff, for an Aſſault and falſe Impriſonment, and the plaintiff has laid his damages at the enormous ſum of £5000, and the plaintiff requires you upon your oaths to find a verdict to that amount, as a compenſation for the injury he alledges to have ſuſtained. Let me aſk why is this exceſſive damages demanded? It is in order to ſhew to the inhabitants of our Siſter Kingdom that we were abſolute ſlaves; I do believe we enjoy the bleſſings of Liberty here, as much as in our Siſter Kingdom, notwithſtanding what has been ſaid by my learned friend. I differ from my learned friend, who adviſed you to find a verdict for £5000, for if you ſhould find your verdict againſt my client, you will no doubt find a verdict with very ſmall damages. I know you will be addreſſed by my learned friend who follows me, but if he confines himſelf to the naked queſtion in this caſe, his argument cannot take up much time; he has been lately in the habit of addreſſing himſelf to the citizens of Dublin, and he is anxious that the real ſentiments of his mind ſhall be known to them.

Gentlemen of the Jury, one ground on which you have been called upon, to give a verdict of ſuch large damages to the plaintiff is, that ſaid *Hevey* was impriſoned through the malice of the defendant; let us examine whether in truth there was any malicious motive which induced the tranſaction, which has given riſe to this action for damages. *Mr. Hevey* as has been ſtated to you, has been held by his fellow-citizens in the moſt reſpectable light, and that he was happy in enjoying the good eſteem and ſociety of the principal traders in this metropolis. Gentlemen, it has appeared in evidence, that in 1798 *Mr. Hevey* was a Yeoman. He appeared then as one of thoſe gallant Volunteers, who in the hour of peril and danger boldly ſtepped forward to cruſh the Rebellion; it was to the efforts of the Volunteers we now enjoy our tranquillity; we relied on the protection of the Yeomanry of Ireland for its defence—upon the faith of the loyalty of the Yeomanry we placed the greateſt confidence. *Mr. Hevey* was in 1798 a Yeoman, he appeared in the uniform of thoſe Illuſtrious Bands; he muſt as ſuch, have taken the oaths of Allegiance,

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ance, and other oaths as a Yeoman, to do the duty his ſtation required. The loyalty of the Yeomanry of Ireland obtained the approbation of Government. The loyalty of *Mr. Hevey* was however doubted, notwithſtanding he did appear as a Yeoman, in uniform. There was a charge exhibited againſt him, of being active in the Rebellion, although he had taken the oath of Allegiance, and that he was a Rebel; he was thereupon apprehended on the charge of High Treaſon, and he was brought up a priſoner to the Royal Exchange, from thence he was committed a priſoner to the Provoſt, and thence ſent to Kilkenny, where he was tried and found guilty, by a Court-martial; and received ſentence to be tranſported for ſeven years, which ſentence *Lord Cornwallis* was pleaſed to revoke. But Gentlemen of the Jury, he was found guilty by the Court martial, and you can have now not any doubt of the fact; you have no foundation now to ſay he was then innocent, for the Court-martial found him guilty of High Treaſon; he had broken the oath of Allegiance, which as a Yeoman he had taken. The lenity of Government did extend to him, and the ſentence of tranſportation againſt him was reverſed, and he was enlarged, having given ſecurity for his keeping the peace. Now Gentlemen of the Jury, it was under theſe circumſtances he was enlarged; and he appeared at large; but whether he got a licence to impower him to be at large, does not appear in evidence. *Mr. Sirr* was a Magiſtrate to whoſe meritorious ſervices, this nation is highly indebted for its preſervation; he was a gentleman by whoſe exertions many perſons accuſed of High Treaſon, were apprehended. *Mr. Sirr* had no perſonal knowledge of the plaintiff before the night of the 8th of September, and he had no previous malice againſt him; there was not an atom of malice on the part of *Mr. Sirr.* On the night of the 8th of September *Mr. Sirr* was ſitting in the Commercial coffee-room with ſome gentlemen, and a perſon came into the coffee-room whom *Mr. Sirr* was told was of the name of *Hevey*, *Mr. Sirr* recollected there was a man of that name, who had in 1798 been tried at Kilkenny, and had been ſentenced to tranſportation, he therefore conceived it proper to enquire, why he appeared at large; and after ſome little converſation, *Mr. Sirr* aſked *Mr. Hevey* to ſhew him his protection; *Mr. Hevey* in a bluſtering ſwaggering manner, thought proper

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per to refuſe to give him any ſatisfactory anſwer; then ſaid *Mr. Sirr*, if you do not give me a ſatisfactory anſwer as to that point, I muſt arreſt you till the truth is enquired into. If you have a protection tell me where I can ſee it; *Mr. Hevey* did tell *Mr. Sirr* at his office, he might go and *aſk his betters for it.* There was a perſon of the name of *Maguire* (but not the Mr. *Maguire* who was produced as a witneſs on this Table) who had been tried on a charge of High Treaſon, when a witneſs who appeared on the part of the proſecution, was as alledged by Mr. *Hevey* a perſon of infamous character; and *Hevey* gave evidence of it; and that *Maguire* it appears was acquitted. But let me aſk, is that tranſaction any ground for you Gentlemen of the Jury, to believe that there was any malice in the mind of Mr. *Sirr* againſt the plaintiff? but I ſhall not detain you on this part of the caſe. Gentlemen it is evident that there could not exiſt any malice in the mind of Mr. *Sirr*, previous to the 8th of September; now let us examine into the tranſactions which took place between plaintiff and defendant on that day. Mr. *Sirr* and a Gentleman with him, was ſitting in the Commercial coffee-room, and the Gentleman ſaid to Mr. *Sirr*, your reſidence in the Country is amongſt many of thoſe who had been Rebels in 1798 live, and Mr. *Sirr* admitted it, but added theſe words, " he was not afraid of any of them;" Mr. *Hevey* happened accidentally to come into the coffee-room, and the gentleman ſaid to Mr. *Sirr*, there ſaid he, is one of them; a perſon who happened to ſit near the table where Mr. *Sirr* was ſitting, heard the converſation, and theſe words ſpoken, "*he ought to be hanged;*" although theſe words were ſpoken in a low voice, yet they were overheard, and ſome officious perſon told *Hevey* theſe words were ſaid; on which *Hevey* turned round, and went up to Mr. *Sirr* and aſked him, did he ſay theſe words; and then ſaid, you, meaning Mr. *Sirr*, *ought to be hanged, you are a liar*; theſe words of Mr. *Hevey* were heard by every perſon preſent, as the witneſs this day has told you. There has been evidence laid before you of the Aſſault and abuſive words given by Mr. *Hevey* to Mr. *Sirr*, and ſpoke in a ferocious manner, in a public coffee-room, where many perſons heard the altercation between theſe two perſons. Mr. *Sirr* aſked Mr. *Hevey* to ſhew him his protection, which Mr. *Hevey* refuſed to do, and then Mr. *Sirr* ſaid, he muſt

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detain him, till he ſhewed him, why he was ſeen at large, having been at Kilkenny, ſentenced to tranſportation for ſeven years;—Mr. *Hevey* did, inſtead of ſhewing his protection, ſay to Mr. *Sirr*, "*You ought to be hanged—you are a liar.*" It has appeared in evidence, that Mr. *Hevey* was tried for High Treaſon, and was convicted, and was afterwards diſcharged by the *Lord Lieutenant*: Mr. *Sirr* had a right to aſk Mr. *Hevey* why he was ſeen at large, and he refuſing to give Mr. *Sirr* any ſatisfactory anſwer, Mr. *Sirr* did bring him to his office, in the lower Caſtle-yard, in order to enquire into the fact, whether Mr. *Hevey* had, or had not, any protection granted to him; or had been pardoned, after being by the Court Martial ſentenced to tranſportation for ſeven years. When Mr. *Sirr* did bring him to his office, he aſked him his name and reſidence, and whether he had, or had not, been tried at Kilkenny; he told Mr. *Sirr* that his name was *Hevey*, and his reſidence in Thomas-court, and acknowledged he had been tried at Kilkenny; but in anſwer to Mr. *Sirr*, about Mr. *Hevey* ſhewing him his protection, he ſaid, "*Go aſk your Betters.*" On which, Mr. *Sirr* ſaid, I muſt commit you to Gaol, until that matter is enquired into.

Now, Gentlemen of the Jury, this is the caſe of the plaintiff, who now brings this action, ſeeking for redreſs, for the injury he has received, and he brings his action of damages. to the enormous amount of £5000; who, if he had told Mr. *Sirr*, when aſked by him, had he a protection, and have then ſaid, I have been pardoned by *Lord Cornwallis*; there would have been an end of the buſineſs. It has been ſaid, that Mr. *Hevey* was committed to the provoſt priſon, and that he was loaded with manacles; there has not been an atom of evidence given, that any kind of manacles whatſoever, was put on Mr. *Hevey*.

Gentlemen of the Jury, as to what happened to Mr. *Hevey*, *after* he was put into the provoſt, in the cuſtody of Mr. *Sandys*, certainly Mr. *Sirr* has nothing to ſay to; for the conduct of Mr. *Sandys*, is not to be viſited upon my client. The next day Mr. *Sandys* told Mr. *Hevey*, if he would make an apology to Mr. *Sirr*, he would endeavour to get him diſcharged.—Mr. *Hevey* refuſed to make any apology, and ſaid, he would appeal to the Law; he was thereupon brought before Mr. *Juſtice Chamberlaine*, who was

pleaſed

pleaſed to remand him to priſon; as it appeared he was in cuſtody, under a charge from *General Craigh*; after this Mr. *Hevey* ſaid, he would ſign an apology; but Mr. *Sirr* ſaid, I do not want any apology, but as Mr. *Hevey* appeals to the Law, I will go to Mr. *Abbot*, and endeavour to get the man diſcharged; and it appears that he has been ſince, that is, the 11th of September, at 12 o'clock diſcharged. I do conceive the law to be, that Mr. *Sirr* was bound by his duty, to enquire of a man whom he ſaw at large, after he had been ſentenced to tranſportation, why the ſentence was not carried into execution; and to detain him a reaſonable time, until that fact was enquired into.—I do ſay he muſt, however, have a reaſonable ground of ſuſpicion for detaining him; in this caſe it is admitted that Mr. *Sirr* did know, that a man of the name of *Hevey*, had been tried at Kilkenny, and had been found guilty, and received ſentence of tranſportation; and afterwards being pointed out to him, ſeeing him at large, he did enquire of him, why the ſentence was not carried into execution; and though it was very eaſy for Mr. *Hevey* to have told Mr. *Sirr*, that he had received a pardon, he refuſed to give any ſatisfactory anſwer to Mr. *Sirr*. By the terms of the amneſty act, Mr. *Hevey* was called upon to produce his diſcharge, and ſhew that he was diſcharged by due courſe of law; he might have ſaid, I have a certificate of it—if Mr. *Hevey* had ſaid that to Mr. *Sirr*, he would have been immediately diſcharged. In this caſe, Mr. *Sirr* had a reaſonable ground for ſuſpicion of Mr. *Hevey*, that is not denyed;—but as ſoon as Mr. *Sirr* had about the 11th of September, diſcovered that Mr. *Hevey* had received a pardon from *Lord Cornwallis*, when *Lord Lieutenant*, Mr. *Sirr* immediately went to Mr. *Abbot*, and obtained from him a diſcharge of this man from the provoſt. This therefore is a good defence, on the part of my client, under the direction of the court, in point of law, to induce you, Gentleman of the Jury, to find your verdict in favour of my client; but ſhould you, Gentlemen, find a verdict for the plaintiff, the next point that comes under conſideration is, whether you would only find nominal, or perhaps 6d. damages. But it is for you, Gentlemen, to aſcertain the quantum of damages; it is for you to take into your eſtimation, the circumſtances of the parties; it has appeared to you in evidence, that Mr. *Hevey*, although he

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was found by the Court Martial guilty, he was ſince pardoned; through the lenity and humanity of Government. As to *Mr. Hevey*'s preſent ſituation, he is now a priſoner in Newgate. You are now upon your oaths to ſay, what injury this man hath ſuſtained; and to ſay whether or no, you will give him any more than nominal damages.

Now, Gentlemen of the Jury, it is for you to conſider what has been the conduct of *Mr. Sirr*, that he ſhould be the Gentleman, who ſhould have vindictive damages awarded againſt him; for what hath this Gentleman done, he has merely acted in diſcharge of his duty, in the manner the witneſſes has told you—he hath for ſome years taken a moſt active part in apprehending traitors, and in ſuppreſſing the late Rebellion; and prevented thereby, the then threatened invaſion of this country. His conduct has been in the higheſt degree praiſe worthy; and until the tranſaction happened, which hath been the ſubject of this preſent action, no imputation whatſoever, could ever be attached to him for any part of his conduct, either public or private. You cannot therefore Gentlemen, but conſider the conduct of *Mr. Sirr*, but as acting in the honeſt exerciſe of his duty. Give me leave to refer to your conſideration, the periods of 1798 and 1799, when the exertions of *Mr. Sirr*, contributed very eſſentially to the ſuppreſſion of the Rebellion;—I ſhall only add, are thoſe public ſervices to have no weight in your mind; that you, by your verdict, would not protect him from the vindictive claim of the plaintiff, who has brought this action, and laid his damages, at the great ſum of £5000. But I have no doubt, your verdict will be ſuch, as will meet the juſtice of this caſe.

JONAH BARRINGTON, Esq.

MY LORD, AND GENTLEMEN OF THE JURY,

In this caſe, I am Council on behalf of the plaintiff, *Mr. Hevey*—I feel it an indiſpenſible duty to ſpeak to this caſe, as I conceive it to be one of the greateſt importance, not only to the plaintiff, but to the crown and to the country. The plaintiff has brought his action to recover damages againſt the defendant, for a violation of the Law, and an aſſault upon the conſtitution. He has brought his caſe before you with confidence, and calls ſteadily for juſtice; not merely to

vindicate his own character, or to avenge his own wrongs; not with the view of mercenary damages, or a malicious triumph; but he calls for juſtice againſt the public officer, who has abuſed the public truſt in his perſon; and in his perſon has endeavoured to convert the legal authority of the crown, into a deſpotic inſtrument for the ſubject. My learned friend, *Mr. Plunkett*, has declared ſincerely, his reluctance to ſpeak to evidence; I am convinced it proceeded from an honeſt conſciouſneſs of a bad cauſe; which blunts his ingenuity, and flattens his talents, when he is called forth as the reluctant advocate of tyranny or of oppreſſion. You have heard him unlike himſelf, ſpeaking a language foreign from his ſentiments. My learned and ingenious friend, feels that his eloquence and ingenuity, could be better applied, and more effectively exerciſed. The language and ſentiments he was neceſſarily obliged to uſe, he conceived would be no recommendation to the patriot feelings of that learned and ſpirited ſeminary, which it is his laudable ambition and wiſh to repreſent. And I am ſure, when that Gentleman came to examine into the defendant's caſe, he would have given up his brief with pleaſure.—I have no ſuch motive to decline ſpeaking to evidence, on the part of the plaintiff, and therefore I exerciſe my duty with pleaſure, as his advocate; and however impoſſible it is in me, to diſplay ſuch ſplendid talents, as my friend *Mr. Curran*, whoſe exertions every man muſt admire. Yet when the topic to be diſcuſſed, is the liberty of the ſubject, he muſt be a ſlaviſh advocate indeed, whoſe energy does not ariſe, in proportion to the importance of the diſcuſſion; and calls out whatever talents God and Nature gave him.

In this caſe, it is only neceſſary to ſtate the material facts proved, in order to convince an honeſt Jury of their bounden duty.—Theſe facts alone will teach you to form a juſt judgment, whether Ireland is to participate in the liberty of that country to which ſhe is now united; or to plunge back again into the chains and tramels of petty and deſpotic tyranny—that is the real queſtion. If you, Gentlemen of the Jury, by your verdict, ſtamp a juſtification on the conduct of *Major Sirr*, Ireland is in bondage; but if your verdict marks that conduct as unjuſtifiable and illegal, Ireland will

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will regain ſome traces of the Britiſh Conſtitution; and the perſonal liberty of the ſubject may be ſecured and protected.

I know I now ſpeak before an honeſt Jury, and a wiſe Judge—the eyes of Ireland are fixed on the event of this trial—not as to *Hevey* or as to *Sirr*, but as to freedom or as to ſlavery. For it is fully and unequivocally proved, that *Mr. Hevey* a ſubject in the King's Peace, againſt whom no public charge remained—and to whom no public crime was then imputed—and againſt whom no warrant exiſted—or any pretence of legal detention, was dragged from a public room in the noon day as a common felon, and plunged into an infectious dungeon, to enforce a private apology, to a private ſubject, for a private inſult, contrary to the ſpirit of the Conſtitution, the law of the land, and the liberty of the Country.

Gentlemen of the Jury, could even the gliding ſhadow of diſtant Liberty, light one moment on a country, where ſuch an act ſhould be held juſtifiable. It is not a common aſſault, committed by an ordinary perſon, on an ordinary occaſion, in the common occurrences of error or of violence; when the damage is meaſured by the private injury, and the wrongs of the individual are not identified with the general liberty of the Country. It is not the caſe of a falſe impriſonment of a perſon in the lower orders of life, by a perſon of the ſame deſcription, where the hours of detention, meaſure the proportion of the injury; but it is a public and unwarrantable impriſonment of a reſpectable Brewer of the City of Dublin, by *Major Sirr*, to gratify the feelings of private paſſion, under the colour of public duty. The *Major* is a Gentleman, whom you all know, to whoſe merit as a public officer, I as freely ſubſcribe, as any perſon who hears me. I admit he was active, indefatigable, and effective, in preſerving the peace of this City, at the time this Country was in danger; but the Rebellion that did in 1798, agitate this kingdom is now paſt, and this Country is now in a ſtate of tranquillity, and was fully ſo in 1801, when the defendant committed the offence before you. Defendant's Council have dwelt on the paſt ſervices of the defendant, but Gentlemen, it is a principle foreign and unknown to our Conſtitution, that any perſon, on any authority, ſhould claim a privilege to commit acts of injury and oppreſſion, on his fellow-citizens, with impunity for paſt ſervices; and for which he

was ſo amply rewarded. It is unknown to the moderns—it was unknown to the ancients. The laſt of the Horatii, though he had ſaved his country, was condemned for the death of his ſiſter;—Manlius was flung from the Tarpean Rock, though he defeated the deſigns of the Gauls, and ſaved the Capitol of Rome. Yet why ſhould we have recurrence to the pages of Ancient Hiſtory; we have a modern and recent example, and with which the *Major* is better acquainted, than the ſtory of Horatii—I mean *Jemmy O'Brien!* he alſo defeated the machinations of the *Gauls*, was the ſaviour of his Country, and preſerved our Capitol, yet *Jemmy* received the reward of paſt ſervices, for he was hanged in this City for murder. His paſt ſervices could not protect him from the law—he died, and the law triumphed!! It is a weak and inſolent defence to ſay, that the defendant's ſervices ſhould warrant his offences—it is abſurd to argue, that becauſe *Major Sirr* knew and ſupported the law in 1798, he ſhould be warranted in overturning his own fabrick, and be at liberty to break through both law and conſtitution in 1801. Becauſe he defended the conſtitution in time of war, is he to deſtroy it in time of peace; and becauſe a rebellion once exiſted, is a tyranny to be erected on its ruins. This argument of defendant's Council, admits my client's caſe, becauſe if defendant's Council had a better argument, they would certainly have uſed it. But they had none, the law failed them, juſtice failed them, and they were obliged to have recourſe to fineſe, and endeavour to lead away the minds of the Jury from the fact in iſſue, and impoſe upon their loyalty, when they could not miſlead their reaſon; defendant's Council as another argument, have had recourſe to another fineſe, equally weak, but more unwarrantable than the former; namely, that the plaintiff, *Mr. Hevey*, had been a rebel in 1798, and convicted, and ſentenced to tranſportation; and that therefore a perſonal injury to him, by ſo meritorious a perſon as defendant, ſhould weigh little with the Jury.—Monſtrous aſſertion!—Even if *Mr. Hevey* had been guilty, which I deny, ſuch a doctrine is moſt vicious. God forbid that when a ſubject receives a pardon, and is reſtored to the boſom of his country, he ſhould remain an outlawed ſlave in the midſt of a free people; on the contrary, *Mr. Hevey* was as much under the protection of the law, as *Major Sirr*, and both delicacy, and honour, and public policy, ſhould rather have united in making a pardoned man forget that he had

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offended, than in making that pardoned offence, a pretence for his oppreſſion. Such a pretence is an inſult to the throne, which pardoned, a charge againſt the lenity of the King, and a crime againſt the liberty of the ſubject; and of all the means which human ingenuity could deviſe, the moſt effectual means of *perpetuating* diſaffection. If ſuch a doctrine was permitted, pardon would only operate as prolonged puniſhment, and repeated injury excite to future diſobedience; the letter of the law, and the ſpirit of the conſtitution, reprobate ſo wicked, ſo weak, and ſo miſchievous a doctrine. But I deny the fact of *Mr. Hevey's* guilt: in times when it was enough to be ſuſpected, to warrant puniſhment, *Mr. Hevey* had enemies; he belonged to the perſecuted caſt, and was charged of courſe, with High Treaſon; the minds of all men were inflamed—rebellion raged—blood was familiar—animoſity was implacable, and *Mr. Hevey* was ſent to Kilkenny, to be tried by Court-martial, for High Treaſon; a reward was offered for any perſon who would give evidence againſt him; no creditable witneſs could be found—no High Treaſon could be proved, yet he was ſentenced to ſeven years tranſportation, on the *charge or ſuſpicion of* High Treaſon; though he muſt have ſuffered death if guilty. The proceedings of the Court-martial were laid before *Lord Cornwallis*, he conſidered them, and under his *Sign Manual*, gave the lie direct, to the minutes of that Court-martial; ordering *Mr. Hevey* to be diſcharged, in as much as it appeared, that he was not active in the Rebellion; and let down the ſentence eaſy, by directing *Mr. Hevey* to give ſecurity, which he immediately did. *Mr. Hevey* was diſcharged; he betook himſelf to his induſtry as a Brewer, a man of wealth, and never had any ſpecies of offence laid to his charge, till the defendant treated him like a common felon in the Commercial coffee-room; and by ſuch treatment, trampled on the juſtice and humanity of the abſent Viceroy. Where then lies the guilt of *Mr. Hevey*?—where then lies the juſtification of *Major Sirr*?—is it in the refuted minutes of the Kilkenny Court-martial—or is it in counteracting the royal lenity, or Viceroyal juſtice?—No; the whole tranſaction is to be found in private paſſion, and perſonal animoſity, working on an irrated mind, to commit a moſt unwarrantable injury. Another part of the defence now made on the part of the defendant, is, that he did not ſhew his protection, when

when demanded by *Major Sirr*—this defence is as weak as as the reſt. *Mr. Hevey* had been three years reſident in Dublin, as a Brewer in public buſineſs, from the time of his pardon—known all over the City as a man of repute and punctuality, he was inſulted—he was injured—he was inflamed—he was conſcious of his own rectitude and ſafety—he had been pardoned, and he was not bound to anſwer *Major Sirr* any queſtion whatſoever. *Major Sirr* had no authority to arreſt him; he had full authority to reſiſt, and if *Major Sirr* had fallen in the conteſt, where would have been the guilt of *Hevey*. Every falſe impriſonment is an aſſault; this was a falſe impriſonment—every man may reſiſt an unwarrantable aſſault—and every man arreſts another at his own peril. But it was ſaid that *Major Sirr* had a reaſonable ground of ſuſpicion of *Mr. Hevey*, and therefore detained him, till he could find the manner in which *Hevey* had been permitted to go at large, but that was not enough; even then, *Mr. Sirr* had *no authority* to commit him to priſon, without firſt bringing him before *ſome magiſtrate*, and making a charge againſt him. A man who receives the benefit of his Majeſty's clemency, under the hand of the *Lord Lieutenant*, is as free as if he had never been found guilty; *Mr. Hevey* it is true, was tried by a Court-martial, but the *Lord Lieutenant* contradicted and reverſed their ſentence, and he gave a certificate of it, which no doubt is lodged in the proper office, to which office moſt *particularly Major Sirr* had an official acceſs, and muſt be *conſidered* as well acquainted with *every* pardon of that deſcription, from the very nature of his occupation in Dublin and in the Caſtle; therefore that was obviouſly a falſe pretence, the certificate of pardon is never lodged with the perſon pardoned, it remains in the office; it is never lodged in the man's hands. *Mr. Hevey* never ſaw his certificate of pardon, and therefore had it not to produce; for the certificate was never depoſited with him, and defendant's Council endeavour to confound a certificate of pardon with a protection—a protection is always in the hands of the perſon protected, and the pardon in the office. *Mr. Hevey* never ſought or got a protection, it was not neceſſary, nor would he have accepted one; becauſe a protection is granted on a confeſſion of guilt, which *Mr. Hevey* never made, nor never will. But the pardon

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was granted on a ground of innocence; and *Mr. Hevey* desired *Mr. Sirr*, when asked by him for his certificate, to ask his betters for it—no doubt it was an abrupt answer; but *Mr. Hevey* was not bound to answer any question; and *Major Sirr's* ferocity would not have induced *Mr. Hevey* to tell him as *a favour*—and is an *abrupt* answer to a *Town major*, a sufficient authority for three days imprisonment in a dungeon, part of it in irons.

Gentlemen of the Jury, it is the Boast, it is the happiness of the British Constitution, that no man shall be wantonly deprived of his Liberty—it is a great offence in a private individual, but in a Publick officer it is a high Crime and Misdemeanor, it is an abuse of a delegated authority without just cause, punishable by heavy fines and penalties. Is it now to be said, that *Mr. Sirr* acted under the orders of *General Craigh?* there has been no evidence given of such orders; and the strongest presumption of the contrary must be entertained, what orders could warrant any man in 1801, to say to another who was in the King's Peace, and under the Law's Protection; I knew you was a Rebel in the year 1798, you have been since Pardoned, but you deserve to be hanged. What orders could warrant the defendant to arrest a peaceable citizen, in a public coffee-room—what orders could warrant *Major Sirr* to drag the plaintiff, like a felon through the publick streets to his office in the Castle, and pretending ignorance of his name and occupation, the *Major* asked him his name, asked him his residence, as if they were his crimes; although it is in evidence that the *Major* knew his name, and addressed him by it in the Commercial coffee-house, but pretended to forget it on the way, and then declared he would commit him to his old Lodgings in the Provost. If the defendant knew his name and residence, he must have well knew he had been discharged; if he did not know his name, what pretence had he for arresting him? In either case, he committed false imprisonment, with aggravating circumstances of the most unwarrantable (though certainly not unparalled) description. That dark and deep Inquisition, (the Provost prison,) the very existence of which would banish every principle of National Liberty, and every pretence of Personal Security from the people of Ireland, if it was suffered to remain longer the Prison and the Tomb of its inhabitants. I say that miserable dungeon has perhaps known many such scenes as this; from which the

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wretched ſufferers have been only releaſed, by the will of that Almighty power, whoſe omnipotence it will yet be the lot of the defendant to experience. *Major Sandys* appears to have been a conſiderable actor in this tranſaction; if the defendant has any defence, *Major Sandys* muſt know, and ſurely will not divulge it unwillingly. He can if poſſible clear up the aſperſions laid ſo heavily on his friend; *Major Sandys* is now attending this Court, and can tell every thing—why does not the defendant produce him, to give evidence; he may be a moſt material and deciſive evidence on the part of the defendant, if any one fact or word, of the plaintiff's caſe is capable of being diſproved—*Major Sandys* hears me, he ſtands by me, yet is ſilent—I call on him in the name of juſtice—I call upon him in the name of friendſhip for his friend *Major Sirr*, to come forward and give evidence—no; a ſentence of my client's caſe cannot be contradicted, and *Major Sandys* is ſilent; he was a witneſs to the whole tranſaction after *Mr. Hevey*'s committal. If then he will not come forward for his friend, every fact ſtands admitted—but his reluctance is eaſily accounted for alſo in another way—if *Major Sandys* was produced, he would not ſtate any thing untruly; and therefore muſt admit upon oath the whole of my client's caſe.—He could prove the injury that my client has ſuſtained—he could prove the miſeries he underwent in the dungeon he was plunged in—he could prove the irons which bound his limbs—and the cold flags which received his wearied body as a couch—he could prove the ſcanty meal of freezing water and of muſty bread, which the charity of the priſon firſt denied, and then allowed him *as a feaſt*—he could prove what number of infectious maladies ventilated the dungeon to which my client was confined. But theſe would be proofs for my client, and *Major Sandys* is ſilent. Permit me my Lord, and Gentlemen of the Jury, to lay before you another circumſtance, not ſolely of a private nature, but which calls for the moſt ſerious conſideration; a circumſtance proving beyond queſtion, the moſt unconſtitutional ſuppreſſion of truth, the moſt daring and deſperate aſſault upon the conſtitution, that ever came before a Court of Juſtice. The Habeas Corpus Act forms the proud Citadel of Britiſh Liberty; it is that act which enſures perſonal ſecurity, and draws one of the firſt diſtinctions between an abſolute and a limited monarchy.

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Without that act, every prison might become a grave, and every officer a tyrant—by that act every person who is confined may apply for his liberation to a Judge; and if he does not appear legally confined, he is instantly set at liberty. The dreadful circumstances of the British Empire at and previous to the Rebellion, formed plausible grounds for the Legislature partially to suspend the effect of that noble Statute; and by several acts of Parliament, it was in fact, actually suspended, under certain restrictions; amongst these upon a writ of Habeas Corpus issuing, the prison keeper was enabled to return, that the prisoner was confined under a warrant of a military officer, for a State offence; and the Judge was bound to admit it. But surely if the dreadful necessity of the times, warranted a partial and temporary suspension of that statute, and gave a confidential trust and authority into military hands, to supercede civil authority and established law, it must be an offence of the highest nature to abuse that authority and trust; and convert that partial and temporary suspension into a private and a revengeful purpose, it is a high crime and misdemenour, punishable by law more severely than I wish to mention—yet that crime was committed. On *Mr. Hevey's* arrest, a writ of Habeas Corpus issued, to bring him before a Judge, in order to be liberated —before a Judge whose benevolent mind, and constitutional principles, were measured by the number of his decisions—and at whose tomb the Law and the Constitution are struggling which shall be seen the deepest mourner — *Mr. Justice Chamberlaine.* But that learned Judge was defrauded of his function; a return was made to that writ of Habeas Corpus, that *Mr. Hevey* was confined under *a warrant of General Craigh, for High Treason.* A false return—a return *not the truth*; he was *not* confined under such warrant—no such warrant appears to have issued—no such offence appears to have been committed—such return was an abuse of authority—it was a fraud upon the learned Judge—it was an unconstitutional extension of an unconstitutional power—it was a great crime, and merited a great punishment. The arrest was illegal—the return was illegal—and that false return having been effectual, proves beyond contradiction, that in the person of my client, not only the individual but the general liberty of the Irish people was implicated and involved.

General Craigh has been subpœned here, by my client, to prove the falsity of that return; he has been called and

called, but he has not appeared; he muſt have proved that the whole was a fabrication, the warrant has not been attempted to be produced in evidence; and although the negative is incapable of *viva voce*, proof without the perſonal attendance of *General Craigh*; and the *General* not appearing to do juſtice, you Gentlemen, are warranted in determining the whole to be a total falſhood, and that no ſuch warrant iſſued. Highly aggravated too, by the only perſon who could give deciſive evidence as to that fact being at the plaintiff's back, and reſtrained for giving ſuch evidence. If ſuch a warrant had iſſued, it would have been the defendant's juſtification; but he has not juſtified, nor proved it, or accounted why he did not; nor has he produced *Major Sandys* who made that return, though he is ſitting by, and therefore the defendant unequivocally admits, that there was not a charge to warrant *Mr. Hevey*'s confinement. But why ſhould I dwell on negative deſcriptions however ſtrong or deciſive; there is poſitive proof to eſtabliſh theſe facts, for the witneſs who has told you that *Mr. Hevey* was detained in priſon, ſays it was becauſe he would not make an apology to *Mr. Sirr* as an individual, for a perſonal offence to him in the Commercial coffee-room. No man in this land is ſuffered by the law to gratify private malice, or to convert his own private injury, into the inſtruments of individual oppreſſion.

Lord Kilwarden. Does it appear who made the return.

Mr. Barrington. My Lord, *Major Sandys* made it, who appears through the whole to have been the confidential, and acting inſtrument of *Major Sirr*; the witneſs ſaid he ſaw a copy of it, but not the original. But it appears that *Mr. Sandys* was the Provoſt Martial, and the friend of *Mr. Sirr*, and made the return, or had it made; the witneſs ſaid he ſaw the plaintiff in cuſtody, in the Provoſt—he ſaid that priſon was appropriated for the cuſtody of perſons charged with High Treaſon; that he had a converſation with *Major Sandys* then, who required an *apology* from *Mr. Hevey* to *Mr. Sirr*, as the ranſom of his liberation. On *Mr. Hevey*'s arreſt by *Major Sirr*, he was brought through the public ſtreets to the Caſtle; *Mr. Sirr* aſked plaintiff his name, as if he was ignorant of that name, though he had called him by it in the Commercial Buildings; and he made out his committal to the priſon of the Provoſt, where *Major Sandys* preſided with deſpotic authority. Could he have brought any charge of High

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High Treaſon againſt him, ſuch charge would have been ſtated in the committal. *It was proved*, that *Mr. Sandys* in perſon, ſuggeſted to plaintiff to make an apology to *Mr. Sirr*, and that he would be liberated. That circumſtance proved the offence beyond controverting—if *Mr. Hevey* was confined for High Treaſon or any publick offence; by what law, or by what authority, could *Major Sandys* liberate him on an *apology* to *Major Sirr*; is *Major Sirr* the Crown, is *Major Sirr* the Conſtitution, or is *Major Sirr* the law; does he unite in his perſon, the Legiſlative and Executive powers—if he does not, by what new revolution is a private apology to him, a ſufficient authority to diſcharge a publick offender? If then *Mr. Hevey* was confined for High Treaſon, *Mr. Sandys* ſhould forfeit his life by law, for ſuffering him at large without authority; if on the other hand, *Mr. Hevey* was not confined for any publick offence, *Major Sirr* ſhall forfeit his property for confining him—thus ſpeaks the law; it protects you, Gentlemen of the Jury, do you protect it. Gentlemen of the Jury, the damages laid in the Declaration, even if you find the full amount of them, are inadequate; you will conſider, the *hardſhips* inflicted on the plaintiff, when in the Provoſt priſon; till the ſtory of my client became public, I could not have believed it poſſible, that after all pretence of inſurrection had ceaſed—after having been *told* that Ireland would have Britiſh Liberty, when ſhe became united to Brittain—I could not have believed it poſſible, that there could have exiſted in the midſt of what is called, a Free City, a deep, dark, loathſome, and infectious dungeon; boaſting all the qualities of Baſtiles and Inquiſitions—kept by an individual, into which his Majeſty's peaceable ſubjects could be plunged without crime; and in which they could be detained, by falſe, and fabricated returns of the King's writs, under pretence of State offences. I could not have believed it poſſible *Mr. Hevey* could have been ſo confined, unleſs the fact had been proved before you on oath, beyond a doubt—yet the fact is ſo; and whatever my client has ſuffered, he has the gratifying conſolation of reflecting, that his diſcloſure of this tranſaction, will inform his Majeſty's Government of the dangerous abuſe of their authority, which I have no doubt they not only never knew, or countenanced, but certainly will puniſh; and have now a glorious opportunity of ſhewing this Nation, that no pretence of paſt

ſervices can warrant a ſtab to the Liberty of the Country. My client may by this day's diſcloſure, give a weapon to the law, to defend the Conſtitution; and his fetters may ſecure the Liberty of the Subject. But as to damages, recur to the circumſtances of his confinement—the gates of no common priſon cloſed upon him—a loathſome, cloſe, and narrow dungeon, was his lodging; diſeaſe and miſery, were the inhabitants of the room in which he was immured—the firſt object which ſtruck the witneſs, was a wretch in the midſt of the room urged by diſorder and confinement, to the moſt diſguſting act of a human creature, every ſenſe alike affected. Another he ſaw half dreſſed in a ragged ſhirt, diſcoloured by the diſeaſe of its owner. A third, with a ſmall book reading, as he conceived, the laſt ſervices to a dead, or dying captive. He looked no more, but haſtily withdrew, nor could even the voice of friendſhip tempt him to enter further, into a place, where contagion and miſery, ſeemed the ruling powers. Yet this was the priſon choſen for my client, becauſe he would not apologize *to a ſubject*. There were many publick priſons in Dublin, where a perſon of his deſcription would be ſuitably accommodated; where cleanlineſs and humanity, are ſtrictly attended to; to theſe he was not taken, or before any publick officer whatſoever. The keepers of theſe priſons would not have detained him without ſome legal committal, for ſome certain crime; and this fully accounts for the *place* to which his perſon was conſigned—ſecret and deſpotick. Will you by your verdict ſay, that *Mr. Hevey* ſuſtained there, no injury from ſuch treatment. When *Mr. Sirr* thought proper without juſt cauſe, or legal authority, to ſeize *Mr. Hevey* by the collar, in the public coffee-room of the Commercial Buildings, and drag him to his office, or rather his inquiſition in the Caſtle-yard, he aſked for his *protection*, *Mr. Hevey* had no *protection*—but he had a better ſafeguard—he had a pardon; protections were only granted, where a culprit had *confeſſed* his crimes; but pardons were granted, where *improper convictions or ſentences* had paſſed; and when innocence, and not guilt, afterwards appeared. A *protection* was granted on a prior acknowledgment of *guilt*; a *pardon* is founded on a ſubſequent proof of *innocence*. There reſted the diſtinction; my client had no protection,

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for he was not guilty, but he had a pardon; for *Lord Cornwallis* had declared the impropriety of his conviction. If *Mr. Sirr* thought he had a right to enquire why my client appeared at large, he ſhould have taken *Mr. Hevey* before a Magiſtrate of this Metropolis, and have had the matter of fact, properly and legally inveſtigated. Do you Gentlemen of the Jury, know ſo little of the world as not to perceive, that many perſons who were in 1798 charged with rebellious practices, are not now uſeful members of ſociety, under the protection of the law, and the ſafeguard of the Conſtitution. By what new code of juriſprudence then, would *Major Sirr* be authoriſed, in defiance of both, to invade the Liberty of the Subject, and deſpiſe the King's pardon; is his authority created, to keep alive the dying embers of diſaffection, to make men believe they are not protected by the law, and thereby excite to new and ruinous projects for redreſs, and emancipation; and to excite the contradictory phenomenon of a petty tyranny, exiſting within a Free Conſtitution, and a *Peace-officer* taking the moſt effectual ſteps to diſturb the growing tranquillity of the Country. *Major Sirr*, and *Major Sandys* appear correſpondent and connected in this tranſaction; my client handed from one to the other, they appear equally to underſtand each others meanings, and to forward each others objects—the one had ſeized, the other had detained my client, neither of them had authority for doing ſo, but both of them had neceſſity for ſome juſtification; they worried their imagination to find one; *Mr. Hevey* had been convicted, but that did not juſtify them, for *Lord Cornwallis* proved his innocence. *Mr. Hevey* was of a once preſcribed ſect, but that preſcription was at an end, and no juſtification could be found there; even fancy was in vain applied to, to find his crime and their juſtification; but even fancy failed them; and at length his crime was aſcribed to be, that he had retorted inſult, by inſult, and had preſumed to ſay, that *Major Sirr* had told a falſhood, and this was conceived to be a *capital offence*; becauſe if it was not an offence againſt the State, the *provoſt* priſon was not adapted to his confinement; and *Major Sandys* had no right to detain him, the two *Majors*, like Caſtor and Pollox, felt the pleaſures of mutual ſupport, and the neceſſity of mutual aſſiſtance, and when one of Demi-gods was offended, both the Demi-gods puniſhed. My client for three

three long days and nights felt the ommipotence of their power, and the puniſhment of his preſumption; they both were culpable—both acted. Is that a reaſon he is not to be compenſated in damages by either; to ſay ſo, would be a new ſpecies of effrontery to impoſe upon a juſt Jury, and diſhonour the name of juſtice. There is a circumſtance mentioned by one of the witneſſes, which merits obſervation, and ſhews the dreadful dungeon into which my client was caſt for this offence to *Major Sirr*; damages ſhould be given, proportioned to the injury the complaint deſerves, but how will you proportion the damages, when you recollect that this witneſs ſaid he went to *Mr. Hevey's* room in the Provoſt priſon, and there ſaw a man read out of a ſmall book, which he took to be a book of Prayer, and as he believed upon his oath, the office of Religion for the dead, or dying man. Infection and diſeaſe had opportunely made a vacancy for my client to lie down on the ſame bed which was then yielding up its morbid inhabitant to the grave. In ſuch a diſmal dungeon was my unfortunate client confined without legal authority, for the ſpace of three days, in order to force from his reluctant lips—not a confeſſion of guilt; not an impeachment of accomplices; not a diſcovery of inſurrections, or developement of High Treaſons. No; it was only to wring from his lips, an humble *perſonal* apology to *Mr. Sirr!!!* And under pretence of that apology to lay ſome ground for a future juſtification; the plaintiff refuſed to ſign any apology; but by the entreaties of his friends, the conſideration of his trade, his children, his health, probably his exiſtence. An apology was extorted, without having committed an offence; and that apology dictated by *Major Sandys*, for his friend *Major Sirr*, to gratify the offended honour of the latter, is probably the firſt inſtance in any Country remote from ſlavery, where ſo outrageous and wanton an oppreſſion could be fathered even for a moment on a government, whoſe name and authority was traduced by the tranſaction. That apology ſo ſigned by him, has been read in Court this day; you have heard it Gentlemen of the Jury,—was the refuſal to ſign ſuch an apology, a juſtification for ſuch an outrage; let me aſk you as guardian of public Freedom, is the Liberty of the Subject, is the Liberty of the Citizens of Dublin, to be thus trampled upon with impunity!!! What man's perſon, or

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property, or character, or life is one moment ſecure, if ſuch tranſactions are not puniſhed by moſt ample and exmplary damages.

My learned friend, *Mr. Fletcher*, has thought proper to ſay, that *Mr. Sirr* had authority to do, as he has done where he had a reaſonable cauſe of ſuſpicion.—*In certain caſes*, where a Magiſtrate has a juſt ground of ſuſpicion, and that fact or well grounded ſuſpicion of it, verified upon oath, *and in ſome caſes* without oath, he may cauſe that man to be apprehended and brought before himſelf, as a Magiſtrate of the place, where the man is taken; but, in this caſe, *Mr. Sirr* took upon himſelf, not being a Magiſtrate of the City of Dublin, to bring *Mr. Hevey* to his *(Mr. Sirr's)* own private office; and there, on writing down his name and place of reſidence, as if theſe were capital offences, without any other apparent cauſe whatſoever, without any perſon coming forward, or called upon to come forward and accuſe him, without any admiſſion or confeſſion to warrant it, *Major Sirr* wrote a committal, committed my client to a military guard, and plunged him into a loathſome, ſcandalous, and infectious dungeon; not to abide the ſentence of the law, but to exemplify a breach of it by his oppreſſor. *Mr. Sirr* had not any authority to confine any man, but under ſome legal warrant; and if he ſeized my client in ſuch a manner, and confined him on ſuſpicion ſome days, yet he did *it at his own peril*, and muſt abide the conſequences; otherwiſe any Magiſtrate or public officer under pretence of ſuſpicion, might indulge the cruelleſt tyranny with impunity. I will ſuppoſe for argument ſake, my client was charged with even ſo great an offence as murder, or even High Treaſon; that he had taken his trial for the ſame, and that he was acquitted and diſcharged by due courſe of Law, or had been convicted and pardoned by the King, upon a ſatisfaction that the verdict was unjuſt and illegal, had the defendant a right afterwards to take up that ſame man, knowing theſe facts, (and it is clear *Major Sirr* from his ſituation and office, and the plaintiff's reſidence in Dublin, as a trader for three years, muſt have known his ſituation;) and to tell him, true you were on your trial, but I am not ſatisfied how you are at large, and therefore I will put you in priſon, till you make me a written *apology*, for preſuming to *meet* me in a public *coffee-houſe*; that is the

true

true ſtatement of this caſe. Gentlemen of the jury, if you regard liberty, or value ſecurity, you muſt mark, ſtrongly mark that tranſaction.

I am far from ſuppoſing that the Government of the Country had any ſhare in the ſpecific acts, of thoſe who may be employed under them, in the diſcharge of particular duties, much leſs, any knowledge of this tranſaction. But I am clear that the Government though not reſponſible by law for individual offences, committed without their knowledge, are by principles of common juſtice bound, to check every exceſſive exerciſe of delegated authority, and I have no doubt they will do ſo. My learned friend, *Mr. Fletcher*, has alſo ſaid, that the plaintiff inſulted the defendant, who is a Magiſtrate, in *the execution* of his office.

Lord Kilwarden.—There has not been a tittle of evidence given to ſhew, that *Mr. Sirr* is a Magiſtrate.

Mr. Bartington.—It lay upon the defendant to prove, firſt that he was a Magiſtrate; and next, that he was acting in the execution of his office; and thirdly, that he was inſulted;—but the contrary of all theſe three parts has been proved. Firſt, it has appeared, that he was not a Magiſtrate of the City; next, it has appeared that he was not acting in the execution of his office; and thirdly, it has appeared that he himſelf, and not the plaintiff, gave the firſt inſult—ſo that every ground of juſtification, on theſe three heads, appears falſe and fallacious. But even ſuppoſe he was a Magiſtrate of the City, and was inſulted in the execution of his office, no Magiſtrate could by law, commit him to a Baſtile or an Inquiſition, without bail or mainprize. A magiſtrate would be bound to commit him to a public priſon, on a legal committal, and bail him when required—'tis the unqueſtionable right of Britiſh or Iriſh ſubjects, to be committed with juſtice, confined with humanity, and bailed according to law. Here my client was committed without reaſon—confined with ſeverity—and detained without bail—every principle and practice of the law was broken in his perſon—and every principle of diſcreet policy and conſtitutional protection, violated by his impriſonment.

My learned friend, *Mr. Fletcher*, has thought proper to ſtate with a great deal of talent and ingenuity, many facts not proved in the caſe; and he has humourouſly told you, that

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probably a paragraph will appear in the News-paper, that on ſuch a day, a remarkable trial was had in the Court of of King's Bench, wherein *Mr. Hevey* was plaintiff, and *Major Sirr*, a moſt meritorious Gentleman was defendant, when the Council for the plaintiff, made a moſt eloquent ſtatement, the Jury without heſitation, found a verdict for the defendant, and fully juſtified the *Major* for his active and uſeful ſervices.—But I am rather of a different opinion from that of the learned Council, for I rather think it may appear in the news-papers of to-morrow, that on this trial, the Jury on hearing deciſive evidence of a moſt wanton and illegal impriſonment by defendant; and a plain and true ſtatement of facts, by plaintiff's Council, notwithſtanding the great exertion of defendant's Council, who moſt candidly uſed every art of ſophiſtry in reaſoning, and equivocation in fact, to miſlead the Jury and puzzle themſelves; the Jury conſidering, that the life, character, and property of every man was involved in the queſtion, inſtantly brought in their verdict for the plaintiff, with £5000 damages, being the full amount of the damages laid in the plaintiff's declaration; and thereby evinced the deteſtation of an honeſt and reſpectable Jury, to every outrage againſt ſociety, and a determination to prevent ſuch conduct in public officers in future.—This I think is the more likely paragraph of the two, and is certainly moſt eſſential to the ſafety and honour of the Gentlemen of the Jury. I doubt not that you will take all theſe impreſſive facts into your conſideration, as guardians of the ſociety and peace of your country; and that you will have a pride in finding ſuch a verdict, as will ſhew the world, that we live yet in a Land of Liberty and Freedom.

Lord Kilwarden charged the Jury to the following effect.—Commenting on the prejudices incident to the infirm ſtate of the human mind, his lordſhip ſaid it was a weakneſs ſo univerſal and ſo interwoven in the nature of man, that judges can no more boaſt of being entirely exempt from them than other men. It was however their peculiar duty to guard againſt any impreſſions by which juſtice might eventually be perverted and the ſubject injured. It was equally incumbent on juries to exert the utmoſt vigilance and care of which they are capable, to keep their judgments free from

any biaſs to which they might be ſuſceptible from the zeal or abilities of counſel, whoſe duty it was to take advantage of any caſual occurrence, which they might conceive lead to eſtabliſh the cauſe of their reſpective clients. Much eloquent declamation had been expended by gentlemen on both ſides, on tyranny, on the coercion of the government, on the decadence of our freedom, on the wiſdom of the conſtitution, and the liberty of the people. To theſe the merits of *Major Sirr* as a public officer, and the ſuppoſed delinquency of the Plaintiff on a former occaſion, had been ſuperadded. It was however the duty of the jury to diſcharge every idea of this nature from their conſideration, and confine themſelves to that narrow point within which the caſe will certainly be found to reſt, when deprived of all thoſe extraneous circumſtances in which it had been involved. The caſe is a very ſimple one between two private individuals, *John Hevey* and *Charles Henry Sirr*; as ſuch alone were they to conſider it; and try what reparation ſhould be made to the plaintiff for the injury he alledges to have ſuſtained, if they ſhall believe from the courſe of the evidence before them that he had ſuſtained any.

The firſt object of their conſideration, muſt be to examine into the facts reſpecting the conduct of *Major Sirr* to the Plaintiff, at the commercial coffee-houſe, and fairly diſcriminate between the caption of the Plaintiff, and the act of confining him in the provoſt. It was uſed in agument by counſel, that any man has authority to apprehend a ſuſpected felon, and make him account for himſelf. That principle cannot be controverted; but it ſtands only with this reſervation, that the perſon doing ſo muſt act at his own peril, and abide all legal conſequences if he cannot ſubſtantiate his charge. However, although an indifferent man, that is one not inveſted with magiſterial authority, might apprehend a ſuſpected felon, yet he has no authority to convey him to priſon without a magiſtrate's committal; therefore *Major Sirr* not being a magiſtrate for the city of Dublin, ſtands certainly reprehenſible in law for the particular fact of falſe impriſonment, as far as the evidence goes. The next queſtion for the conſideration of the Jury his lordſhip ſaid, muſt ariſe from the intention and motives by which *Major Sirr* was actuated in his conduct to the Plaintiff. If any evidence occurred to ſupport one part of *Mr. Curran*'s ſtatement, which

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was, that the Defendant was inſtigated by a malicious and vindictive ſpirit, in conſequence of the depoſitions which the Plaintiff made to diſcredit the oath of *M'Cann* on the trial of *Maguire*; his lordſhip aſſerted that as to the quantum of damages, he would no more heſitate at £5000 at which they were laid, than he ſhould at five-pence; but as no attempt even had been made to ſupport that allegation by any ſpecies of evidence, the Jury muſt avoid taking the principle imputed to *Major Sirr* into conſideration, and examine into motives as well as facts, by a fair deduction from teſtimony alone. It appeared to his lordſhip that *Major Sirr* was merely actuated by a ſudden impulſe of paſſion in ſeizing on *Hevey*, in conſequence of the abuſive language received from him; nor did he perceive any violent aggreſſion on the part of *Sirr* to provoke ſuch language. Whatever opinion he might have entertained of the conduct or loyalty of the Plaintiff, it was evidently not his purpoſe at that time, publicly to upbraid him with it, by a converſation held in a confidential manner, and in a low voice with the witneſs *Hall*. His lordſhip did not offer this obſervation in vindication of the general conduct of the Defendant,—but merely to exculpate him as he conceived he merited, from the charge of malice or revenge of which no evidence had been adduced. At the ſame time it was to be regretted that *Major Sirr* who was certainly a very active inſtrument in tranquillizing the country, while in a ſtate of alarming perturbation, ſhould not have had ſufficient diſcretion and command of mind during the exerciſe of a temporary authority, which nothing but neceſſity alone could warrant, to exert that authority with mildneſs, even with reluctance under the influence of public duty, and for the public good alone, without any regard to perſonal feelings or irritated paſſions.

The occaſions which under Providence, ſeldom occur to compel governments to tranſcend the fixed boundaries of the ſubject's freedom, under our happy conſtitution, are ſtill of that momentous and awful deſcription, as to call for acts of military coercion; and to theſe ſeaſonable acts have we been indebted for the reſtoration of thoſe very laws which in times of tranquillity, are ſo forcible and energetic in prohibiting the wanton intruſion of military power. It is in fact to the principle which ſo many have been pleaſed to call tyranny,

that we are indebted for the preſervation of that liberty which in neceſſary inſtances muſt have been violated, in order to perpetuate its effects, and render the happineſs of a people permanent Every man inveſted with a temporary authority beyond the laws, ſhould therefore be made acquainted with the neceſſity which prompted it, and regulate his conduct by a firm undeviating regard to that duty which neceſſity impoſes, from conſiderations of the public ſafety alone; ſo that if *Major Sirr* inſtigated as he believed, by a momentary irritation, had ſtretched his authority in making the caption and committing the Plaintiff; ſoon as his emotions had ſubſided, he ſhould have ran with impetuoſity to liberate him. But inſtead of that he temporized, and as appeared to his lordſhip, trifled with the Plaintiff in the meſſage he ſent him, reſpecting an order to *Major Sandys* for his releaſe, with the latter's anſwer about his detention on a general officer's warrant, which warrant, *Sirr*, his lordſhip conceived muſt have had cogniſance of, before he ſent *Hevey* an ambiguous or fallacious meſſage.

It was ſtrongly urged by the Defendant's counſel, that *Hevey* carried about him the ſtigma and ſuſpicion annexed to the character of a condemned criminal, in conſequence of the ſentence of a court-martial, before whom he was tried in Kilkenny; and that under theſe circumſtances the conduct of the Defendant towards him could be vindicated and ſupported. To ſuch argument *Lord Cornwallis's* pardon is a direct and unqueſtionable reply. That pardon had effectually wiped out the ſtain of the Plaintiff's former delinquency, notwithſtanding the weighty recogniſances under which he ſtood for the preſervation of the peace; nor ſhould his former errors have been viſited on him in any point of coercion, or even imputation, until he was guilty of ſome act by which thoſe recogniſances might have become forfeited.

The next and only queſtion for the conſideration of the Jury which his lordſhip urged, regarded the principle of liberal or nominal damages. If with his lordſhip the Jury could perceive no trait of malice or revenge in the conduct of *Sirr*, it was merely their duty to appreciate damages for the Plaintiff, according to the inconvenience he was ſubject to, or the injury he had actually ſuſtained. If on the other hand

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hand they found reaſon to believe, that the Plaintiff in reſiſting thoſe interrogatories which *Major Sirr* had put to him, immediately after conveying him to the provoſt, reſpecting a protection or ſome authority for being at large; had a view to provoke confinement, in order to lay a foundation for theſe proceedings; it ſhould then be their duty to give none but damages merely nominal. Theſe were the obſervations which occurred as neceſſary for his lordſhip to deliver, which he recommended to the Jury to weigh and compare, with perhaps many more cogent ones of their own; at the ſame time not forgetting to diſcharge their minds from every ſpecies of intemperate feeling or indignation, which different relations and comments on the ſame occurrence, might poſſibly have contributed to excite in them.

The Jury retired, and ſhortly returned with a verdict for the Plaintiff, £150 damages, with coſts.

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COUNSEL FOR THE DEFENDANT,

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Agent, Thomas Kemmis, Eſq; Crown-ſolicitor.

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